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No. 50362-0-II

Kitsap County No. 14-1-01073-5

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

DAVID MICHAEL KALAC,

Appellant.

---

ON APPEAL FROM THE  
SUPERIOR COURT OF THE STATE OF WASHINGTON,  
KITSAP COUNTY

The Honorable Judge Jeanette Dalton

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*SUPPLEMENTAL BRIEF OF APPELLANT*

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A. SUPPLEMENTAL ASSIGNMENTS OF ERROR

1. This Court should strike the \$200 criminal filing fee, \$100 DNA fee and interest provision of the judgment and sentence<sup>1</sup> under the new controlling precedent of State v. Ramirez, \_\_ Wn.2d \_\_, \_\_ P.3d \_\_ (No. 95249-3)(2018 WL 4499761) (September 20, 2018).<sup>2</sup>
2. Under Ramirez, 2018 changes<sup>3</sup> to the legal financial obligations statutes apply to appellant who was indigent at the time of sentencing.
3. Appellant assigns error to the following preprinted language on the judgment and sentence:

**LEGAL FINANCIAL OBLIGATIONS - RCW 9.94A.760.** The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations.

CP 2131.

B. SUPPLEMENTAL QUESTION PRESENTED

2018 legislative changes to the relevant statutory scheme eliminated the bulk of LFOs for indigent defendants. In Ramirez, supra, the Supreme Court held that the 2018 changes applied to all cases pending on first direct appeal, regardless when sentencing or even lower appellate court review had occurred.

Is appellant entitled to relief under Ramirez where he was ordered to pay LFOs and was indigent at the time of sentencing?

C. SUPPLEMENTAL STATEMENT OF THE CASE

David Kalac was found indigent prior to and after trial. See CP 30, 2146-2148; SRP 65.

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<sup>1</sup>A copy of the judgment and sentence is attached as Appendix A.

<sup>2</sup>A copy of the decision is attached as Appendix B.

<sup>3</sup>A copy of Engrossed Second Substitute House Bill 1783 (2018) is attached as Appendix C.

Preprinted on the judgment and sentence was the following language:

**LEGAL FINANCIAL OBLIGATIONS - RCW 9.94A.760.** The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations.

CP 2131. The court then ordered a \$500 victim assessment, a \$DNA “collection fee,” and a \$200 filing fee. CP 2131. Also preprinted on the judgment and sentence was a condition that the amount would bear 12% interest from the date of the judgment and sentence (but it would be waived for timely payments). CP 2131.

At sentencing, the prosecutor told the court that it should impose the “mandatory financial assessments[.]” SRP 14. After imposing 82 years, the judge then waived “all but the mandatory fines and fees,” declaring that Mr. Kalac was “not ever going to have an opportunity to be able to pay those.” SRP 63.

On September 20, 2018, the state Supreme Court decided Ramirez, supra (App. B). This Supplemental Brief follows.

D. SUPPLEMENTAL ARGUMENT

THIS COURT SHOULD STRIKE THE LEGAL FINANCIAL OBLIGATIONS UNDER RAMIREZ

In 2018, the Legislature amended the statutory scheme under which most court have imposed “legal financial obligations” (LFOs) against defendants in state criminal cases. See Laws of 2018, ch. 269 (Engrossed Second Substitute House Bill (“Bill”) 1783 (2018)(App. C)). In Ramirez, supra, the state’s highest Court just held that those amendments apply to all cases currently pending on direct review.

See App. B. As a result, appellant is entitled to relief.

Before 2018, the relevant statutes allowed and sometimes even required imposition of multiple LFOs on those convicted of a crime. See State v. Blazina, 182 Wn.2d 827, 344 P.3d 680 (2015). At the time of the sentencing here, “legal financial obligations” were defined in former RCW 9.94A.030(30)(2012), as “a sum of money that is ordered by a superior court” including

restitution to the victim, statutorily imposed crime victims’ compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys’ fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction[.]

A sentencing court was somewhat constrained in imposing costs, because former RCW 10.01.160(1)(2013) provided that costs “shall be limited to expenses specially incurred by the state in prosecuting the defendant[.]” Former RCW 10.01.160(3)(2013) further required that a sentencing court “shall not order a defendant to pay costs unless the defendant is or will be able to pay them.”

When the superior court chose to order LFOs, former RCW 9.94A.760 (2011) required the court to separately set out each LFO, i.e., assessments for restitution, “costs, fines, and other assessments required by law.” The lower court complied in this case, setting forth on the judgment and sentence the following separate orders: \$200 for a criminal filing fee, \$100 for a DNA testing fee, and \$500 for the “crime victims” fund fee. See CP 2131; App. A.

In Blazina, supra, the state’s highest court noted the

requirement of former RCW 10.01.160(3)(2013), that a sentencing court “shall not order a defendant to pay costs unless the defendant is or will be able to pay them.” 182 Wn.2d at 829-30. The Blazina Court also noted that most sentencing courts in our state were not conducting any analysis of a defendant’s actual “ability to pay.” Id. The Court condemned that use of “boilerplate” or pre-printed “findings” of a defendant’s “ability to pay” if the record showed that the court had not conducted a careful, individualized examination of a defendant’s actual financial situation. Id.

Further, the Court recognized serious systemic problems with the LFO scheme, which had led to significant inequities and issues for defendants who were indigent when sentenced. Blazina, 182 Wn.2d at 829-30.

Since Blazina, courts have struggled to determine both what constitutes an adequate inquiry and for which costs, exactly, a Blazina analysis must occur. See e.g., State v. Sinclair, 192 Wn. App. 380, 367 P.3d 612, review denied, 185 Wn.2d 1034 (2016); State v. Stoddard, 192 Wn. App. 222, 686 P.3d 474 (2016); State v. Clark, 191 Wn. App. 369, 362 P.3d 309 (2015). It was expected that Ramirez would provide some needed clarity, as the Supreme Court granted review to “articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs” under Blazina. App. B at 4.

After review was granted in Ramirez, however, the 2018

Legislature significantly amended our LFO system. See Ramirez, App. B at 4-5. More specifically, Engrossed Second Substitute House Bill (“Bill”) 1783 (2018) was passed. See Laws of 2018, ch. 269 (ESSHB 1783 (App. C)).

With the Bill, the Legislature chose to “prohibit[] the imposition of certain LFOs on indigent defendants[.]” Ramirez, App. B at 4-5. Whereas before, under Blazina, former RCW 10.01.160(3)(2013) allowed imposition of “discretionary” LFOs with a proper finding of “ability to pay,” the amendments to RCW 10.01.160(3) now “categorically prohibit” imposition of *any* discretionary LFOs on a defendant who was indigent at the time of sentencing. See Laws of 2018, ch. 269, § (6)(3); Ramirez, App. B at 5.

Other provisions of the bill prohibit imposition of specific LFOs, such as the \$200 court filing fee, if the defendant is indigent, and declining to impose the \$100 DNA testing fee if the defendant has previously given the state DNA. See Ramirez, App. B at 4-5; Laws of 2018, ch. 269, § 18 (App. C).

In Ramirez, after first deciding some issues regarding the Blazina analysis, the Court then did not apply Blazina, instead finding that the 2018 Bill had changed the law. Ramirez, App. B at 10. The Court first noted that the Bill was “concerning attorney fees and costs[.]” Ramirez, App. B at 11-12. The Court then pointed out that the “precipitating event” for such a statute is the end of any direct appeal. App. B at 11-12, citing, State v. Blank, 131 Wn.2d 230, 249, 930 P.2d 1210 (1997). Because the Bill’s provisions “concern the courts’

ability to impose costs on a criminal defendant following conviction,” the Ramirez Court held, the amendments wrought by the Bill applied to defendants like Ramirez whose cases are “on appeal as a matter of right.” Ramirez, App. B at 12.

Put another way, cases still pending on direct review at the time of the statutory changes “not final under RAP 12.7.” Ramirez, App. B at 12. As a result, the Ramirez Court held, the changes to the LFO scheme contained in the 2018 Bill apply to all cases still pending on direct review when those changes were enacted -regardless when sentencing occurred. Id.

Under Ramirez, this Court should grant Mr. Kalac relief. He was found indigent at the time of sentencing and his case is still on direct appeal. The criminal filing fee statute, former RCW 36.18.020(2)(h) (2014), authorized imposition of a fee but now prohibits such fees against those who are indigent. See Ramirez, App. B at 10-11; Laws of 2018, ch. 269, § 17. Interest may no longer be charged on nonrestitution LFOs, either, based on the Bill. See former RCW 10.82.090 (2015); Laws of 2018, ch. 269, §§ 1, 5 (App. C).

The Bill also eliminated the mandatory nature of the DNA lab “fee,” provided the defendant has previously given the state their DNA. Laws of 2018, ch. 269, § 10; see former RCW 43.43.7541 (2015). Here, Mr. Kalac has a criminal history including prior Washington felonies so has given his DNA to the state in the past. See CP 2128-31.

Under Ramirez, appellant is entitled to relief. More specifically, this Court should strike the \$200 criminal filing fee, 100

DNA fee, and the interest provision of the judgment and sentence.

E. CONCLUSION

For the reasons stated herein and in the opening brief, this Court should grant relief.

DATED this 19th day of October, 2018.

Respectfully submitted,



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DECLARATION OF SERVICE BY EFILING/MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Brief to opposing counsel via this Court's upload service, to Kitsap County Prosecutor's Office and depositing the same in first-class mail, postage prepaid, to David Kalac, DOC 352173, WSP, 1313 N. 13<sup>th</sup> Ave., Walla Walla, WA. 99362.

DATED this 19th day of October, 2018,



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# APPENDIX A

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IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON, )  
 ) No. 14-1-01073-5  
 )  
 ) Plaintiff, )  
 )  
 ) JUDGMENT AND SENTENCE  
 )  
 ) v. )  
 )  
 )  
 )  
 )  
 ) DAVID MICHAEL KALAC, )  
 ) Age: 35; DOB: 06/29/1981, )  
 )  
 )  
 )  
 ) Defendant. )

A sentencing hearing was held in which the Defendant, the Defendant's attorney, and the Deputy Prosecuting Attorney were present. The Court now makes the following findings, judgment and sentence.  
The Defendant was found guilty, by  plea  jury verdict  bench trial  trial upon stipulated facts, of the following-

2.1 CURRENT OFFENSE(S) <i>Asterisk (*) denotes same criminal conduct (RCW 9.94A.525).</i>	RCW	Date(s) of Crime from to		The Special Allegations* listed below were pled and proved
I Murder in the First Degree	9A.32.030.1A	11/03/2014	11/04/2014	
I Domestic Violence	10.99.020			X
I Special Allegation-Aggravating Circumstance-Impact on Persons Other than Victim	9.94A.535.3R			X
I Special Allegation-Aggravating Circumstance-Lack of Remorse	9.94A.535.3Q	11/03/2014	11/04/2014	X
II Theft of a Motor Vehicle (Incident July 22, 2007 or Later)	9A.56.065	11/03/2014	11/04/2014	
II Domestic Violence	10.99.020	11/03/2014	11/04/2014	X

JUDGMENT AND SENTENCE; Page 1  
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1	III	Possession of Stolen Property in the Second Degree	9A.56.160.1C	11/03/2014	11/04/2014	
2	III	Domestic Violence	10.99.020	11/03/2014	11/04/2014	X

4	2.2 CRIMINAL HISTORY (RCW 9.94A.525) <i>Asterisk (*) denotes prior convictions that were same criminal conduct.</i>		Date of Crime	Date of Sentence	Sentencing Court	Juv (x)
5	6 <sup>th</sup>	Degree Assault – Attempt	12/09/2014	04/24/2015	Kitsap Superior, WA	
7	8	1 <sup>st</sup> Degree Burglary	12/09/2014	04/24/2015	Kitsap Superior, WA	
9	9	Unlawful Imprisonment	12/09/2014	04/24/2015	Kitsap Superior, WA	
10	11	Harassment (Death Threat/Previous) DV	03/29/2014	04/24/2014	Kitsap Superior, WA 14-1-00378-0	
12	13	DUI DWLS 2	07/28/2012	10/08/2012	Port Orchard Municipal, WA 10828211	
14	16	Harassment (GM) 4 <sup>th</sup> Degree Assault	07/14/2012	10/12/2012	Kitsap District, WA 10828210	
17	18	DUI	01/01/2012	04/06/2012	Port Orchard Muni 10828208	
19	20	2 <sup>nd</sup> Degree Assault	06/26/2011	09/02/2011	Kitsap Superior, WA 11-1-00581-8	

2.3 SENTENCING DATA									
Count	Offender Score	Seriousness Level	Standard Range	Days (x)	Mo. (x)	Special Allegations Type*	Mo.	Total Standard Range (Mo.)	Maximum Term
I.	8	XV	370-493	-	X	DV; 9.94A.535(3)(R) 9.94A.535(3)(Q)		370-493	Life
II.	6	II	17-22		X	DV		17-22	10 yrs
III.	6	I	12+-14		X	DV		12+-14	5 yrs

Defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525.

\*SPECIAL ALLEGATION KEY (RCWs)- F=Firearm (9.94A.533), DW=Deadly Weapon (9.94A.602,533); DV=Domestic Violence (10.99.020); SZ=School Zone (69.50.435,533); SM=Sexual Motivation (9.94A.835 and/or

JUDGMENT AND SENTENCE; Page 2  
[Form revised August 23, 2016]



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9.94A.533); **VH**=Vehicular Homicide Prior DUI (46.61.520,5055); **CF**=drug crime at Corrections Facility (9.94A.533); **JP**=Juvenile Present at manufacture (9.94A.533,605); **P**=Predatory (9.94A.836); **<15**=Victim Under 15 (9.94A.837); **DD**=Victim is developmentally disabled, mentally disordered, or a frail elder or vulnerable adult (9.94A.838, 9A.44.010); **CSG**=Criminal Street Gang Involving a Minor (9.94A.833); **AE**=Endangerment While Attempting to Elude (9.94A.834).

**CONFINEMENT/STATUS**

- 4.5-FIRST-TIME OFFENDER. RCW 9.94A.030, 9.94A.650. The Defendant is a First Offender. The Court waives the standard range and sentences the Defendant within a range of 0-90 days.
- CHEMICAL DEPENDENCY**-The Court finds the Defendant has a chemical dependency that contributed to the offense(s).
- PARENTING SENTENCING ALTERNATIVE**-- RCW 9.94A.030, RCW 9.94A.655. The Court finds the Defendant is eligible for the parenting sentencing alternative and this alternative is appropriate and should be imposed. The Court waives imposition of a sentence within the standard range and imposes a term of community custody.
- 4.5-PRISON-BASED DOSA-SPECIAL DRUG OFFENDER SENTENCING ALTERNATIVE. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence of one-half the midpoint of the standard range, or 12 months, whichever is greater.
- RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA**. RCW 9.94A.660. The standard range is waived and the Court imposes a sentence as outlined in the attached ADDENDUM RE: RESIDENTIAL DOSA.
- 4.7-WORK ETHIC CAMP. RCW 9.94A.690, 72.09.410. The Court finds that the Defendant is eligible and is likely to qualify for work ethic camp and the Court recommends that Defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, Defendant shall be released on community custody for any remaining time of total confinement, subject to conditions. Violation of the conditions of community custody may result in a return to total confinement for the balance of Defendant's remaining time of total confinement.
- 2.4-EXCEPTIONAL SENTENCE-- Special allegations found by jury verdict establish substantial and compelling reasons justifying a sentence  above  below the standard range,  within the standard range for Count \_\_\_ but served consecutively to Count(s) \_\_\_, or  warranting exceptional conditions of supervision for Count(s) \_\_\_\_\_.  
The Prosecutor  did  did not recommend a similar sentence.  The exceptional sentence was stipulated by the Prosecutor and the Defendant.
- 4.5-PERSISTENT OFFENDER-The Defendant is a Persistent Offender and is sentenced to life without the possibility of early release. RCW 9.94A.570.

COURT'S SENTENCE:		
<i>Sentences over 12 months will be served with the Department of Corrections. Sentences 12 months or less will be served in the Kitsap County Jail, unless otherwise indicated.</i>		
COUNT <u>I</u> <u>984</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT ___ ___ <input type="checkbox"/> Days <input type="checkbox"/> Mo.	COUNT ___ ___ <input type="checkbox"/> Days <input type="checkbox"/> Mo.
COUNT <u>II</u> <u>22</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT ___ ___ Days with ___ Days Suspended for ___ Years	
COUNT <u>III</u> <u>K</u> <input type="checkbox"/> Days <input checked="" type="checkbox"/> Mo.	COUNT ___ ___ Days with ___ Days Suspended for ___ Years	
COUNT ___ 12 months + 1 day	COUNT ___ 12 months + 1 day	COUNT ___ 6 months + 1 day
PRISON-BASED DOSA - COUNT ___ Months Actual Time to be served- ___ Months		
PRISON-BASED DOSA - COUNT ___ Months Actual Time to be served- ___ Months		
PRISON-BASED DOSA - COUNT ___ Months Actual Time to be served- ___ Months		



1 **IF MULTIPLE COUNTS—Total confinement ordered:** \_\_\_\_\_  Days  Months. ( per DOSA sentence)  
2 **COUNTS SERVED—** Concurrent  Consecutive  Firearm and Deadly Weapon enhancements served consecutive;  
3 the remainder concurrent.  Sexual Motivation enhancements served consecutive; the remainder concurrent.  
 VUCSA enhancements served  consecutive  concurrent; the remainder consecutive.

4 **4.4—CONFINEMENT ONE YEAR OR LESS—**Defendant shall serve a term of confinement as follows:

- 5  **JAIL ALTERNATIVES/PARTIAL CONFINEMENT.** RCW 9.94A.030(31). If the defendant is found  
6 eligible, the confinement ordered may be converted to—Work Release, RCW 9.94A.731 (*Note: the*  
7 *Kitsap County Jail has the discretion to have the Defendant complete work release at the Kitsap County Jail*  
8 *or Peninsula Work Release*), Home Detention, RCW 9.94A.731, .190, or Supervised Community  
9 Service or Work Crew, RCW 9.94A.725 at the discretion of the Kitsap County Jail.

10  **STRAIGHT TIME.** The confinement ordered shall be served in the Kitsap County Jail, or if  
11 applicable under RCW 9.94A.190(3) in the Department of Corrections.

12 **4.5—CONFINEMENT OVER ONE YEAR—**Defendant is sentenced to the above term of total confinement in the  
13 custody of the Department of Corrections.

14  **OTHER SENTENCES —**This sentence shall be served  consecutive  concurrent to sentence(s) ordered  
15 in cause number(s) 14-1-01246-1.

16  **CREDIT FOR TIME SERVED.** RCW 9.94A.505. Defendant shall receive credit for time served prior to  
17 sentencing solely for this cause number as computed by the jail unless specifically set forth—\_\_\_\_\_ days.

18  **4.3—NO CONTACT ORDER—**Defendant shall abide by the terms of any no contact order issued as part of  
19 this Judgment and Sentence.

#### 20 SUPERVISION

21  **4.6—COMMUNITY CUSTODY – SENTENCES OTHER THAN DOSA, SSOSA AND WORK ETHIC CAMP.**  
22 RCW 9.94A.505, .701, .702, .704, .706. Defendant shall be supervised for the longest time period  
23 checked in the table below. Defendant shall report to DOC in person no later than 72 hours after  
24 release from custody and shall comply with all conditions stated in this Judgment and Sentence,  
25 including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or  
26 DOC during community custody (and supervised probation if ordered). *First Offenders—RCW*  
27 *9.94A.650.* If Defendant is sentenced as First Offender, the Defendant may be supervised for up to 6  
28 months; and if treatment is ordered, community supervision may include up to the period of treatment  
29 but not exceed 1 year.



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**Community Custody Is Ordered for the Following Term(s):**

For offenders sentenced to the custody of DOC (total term of confinement 12+ months or more):

- COUNT(S)   1   36 months for: Serious Violent Offenses; Sex Offenses (including felony Failure to Register as a Sex Offender if the defendant has at least one prior felony failure to register conviction);
- COUNT(S)            18 months for Violent Offense
- COUNT(S)            12 months for: Crimes Against Person; felony offenses under chapter 69.50 or 69.52 RCW; felony Failure to Register as a Sex Offender (if the defendant has no prior convictions for failure to register)

For offenders sentenced to a term of one year or less :

- COUNT(S)            12 months for: Violent Offenses; Crimes Against Persons; felony offenses under chapter 69.50 or 69.52 RCW; Sex Offenses; felony Failure to Register as a Sex Offender (regardless of the number of prior felony failure to register convictions ).
- Community custody for sex offenders may be extended for up to the statutory maximum term.
- For sex offenses, defendant shall submit to electronic home detention if imposed by DOC

**Supervised Probation is Ordered for Gross Misdemeanor and Misdemeanor convictions in this Judgment and Sentence, to be administered by the DOC, for:**

- COUNT(S)                12 months     24 months            months

**4.6-WORK ETHIC CAMP-COMMUNITY CUSTODY.** RCW 9.94A.690, 72.09.410. Upon completion of the work ethic camp, the Defendant shall be on community custody for any remaining time of total confinement. Defendant shall comply with all conditions stated in this Judgment and Sentence, including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody. Violation of the conditions may result in a return to total confinement for the balance of the Defendant's remaining time of confinement.

**4.6- PRISON-BASED DOSA-COMMUNITY CUSTODY.** RCW 9.94A.660. Defendant shall serve the remainder of the midpoint of the standard range in community custody. Defendant shall undergo and successfully complete a substance abuse treatment program approved by the division of alcohol and substance abuse of the Dept. of Social and Health Services. Defendant shall report to the DOC in person not later than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and Sentence including those checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC during community custody.

**4.7-ADDITIONAL CONFINEMENT UPON VIOLATION OF DOSA SENTENCE CONDITIONS-**If DOC finds that the Defendant has willfully violated the conditions of the drug offender sentencing alternative program, DOC may reclassify the Defendant to serve the remaining balance of the original sentence. In addition, as with any case, if the Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in any case, if the Defendant has not completed his or her maximum term of total confinement and is subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC may return the Defendant to a state correctional facility to serve up to the remaining portion of the Defendant's sentence. RCW 9.94A.714.

**4.7-ADDITIONAL TERM OF COMMUNITY CUSTODY UPON FAILURE TO COMPLETE OR TERMINATION FROM THE DOSA PROGRAM-**If the defendant fails to complete, or is administratively terminated



1 from, the drug offender sentencing alternative program, the court imposes a term of 12 months  
2 community custody under RCW 9.94A.701 unless community custody is not authorized for the crime,  
3 to begin upon the defendant's release from custody, and during this term of community custody, the  
4 defendant shall comply with all conditions stated in this Judgment and Sentence including those  
5 checked in the SUPERVISION SCHEDULE, and other conditions imposed by the court or DOC.

6  **4.6—RESIDENTIAL CHEMICAL DEPENDENCY TREATMENT-BASED DOSA—COMMUNITY CUSTODY.**  
7 RCW 9.94A.660. The Defendant shall serve a term of community custody as outlined in the attached  
8 ADDENDUM RE: RESIDENTIAL DOSA, and all of the conditions and requirements included in the  
9 ADDENDUM are hereby imposed.

10 **-ADDITIONAL CONFINEMENT UPON VIOLATION OF RESIDENTIAL CHEMICAL DEPENDENCY**  
11 **TREATMENT-BASED DOSA SENTENCE CONDITIONS—**If the court finds that the Defendant has  
12 willfully violated the conditions of the drug offender sentencing alternative program, the court may  
13 order the Defendant to serve a term of total confinement equal to one-half the midpoint of the standard  
14 range or a term of total confinement up to the top of the standard range. The court may also impose a  
15 term of community custody. In addition, as with any case, if the Defendant is subject to a first or  
16 second violation hearing and DOC finds that the Defendant committed the violation, the Defendant  
17 may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633. Further, as in  
18 any case, if the Defendant has not completed his or her maximum term of total confinement and is  
19 subject to a third violation hearing and DOC finds that the Defendant committed the violation, DOC  
20 may return the Defendant to a state correctional facility to serve up to the remaining portion of the  
21 Defendant's sentence. RCW 9.94A.714.

22  **4.6—PARENTING SENTENCING ALTERNATIVE—COMMUNITY CUSTODY.** RCW 9.94A.655. Defendant  
23 shall serve a term of community custody of 12 months. Defendant shall report to DOC in person no later  
24 than 72 hours after release from custody and shall comply with all conditions stated in this Judgment and  
25 Sentence, other conditions imposed by the Court and all conditions imposed by DOC during community  
26 custody.

27 **4.7—ADDITIONAL CONFINEMENT UPON VIOLATION OF PARENTING SENTENCING ALTERNATIVE—**If the  
28 court finds that the Defendant has willfully violated the conditions of this sentencing alternative or if the  
29 defendant fails to make satisfactory progress in treatment, the court may order the defendant to serve a term  
30 of total confinement up to the top of the standard sentencing range, the court may impose sanctions or  
31 modify conditions of community custody.

**REVIEW HEARING:** At any time during the period of community custody, the court may bring the  
Defendant back to Court to evaluate progress in treatment. The defendant shall appear at a review hearing  
on \_\_\_\_\_.

**COMMUNITY CUSTODY VIOLATIONS.** In any case in which community custody is imposed, if the  
Defendant is subject to a first or second violation hearing and DOC finds that the Defendant committed  
the violation, the Defendant may receive as a sanction up to 60 days of confinement per violation.  
RCW 9.94A.633. Further, in any case, if the Defendant has not completed his or her maximum term  
of total confinement and is subject to a third violation hearing and DOC finds that the Defendant  
committed the violation, DOC may return the Defendant to a state correctional facility to serve up to  
the remaining portion of the Defendant's sentence. RCW 9.94A.714.



**SUPERVISION SCHEDULE: The Defendant Shall-**

- STANDARD**
  - Obey all laws and obey instructions, affirmative conditions, and rules of the court, DOC and CCO.
  - Report to and be available for contact with assigned CCO as directed.
  - Obey all no-contact orders including any in this judgment.
  - Remain within prescribed geographical boundaries and notify the court and CCO in advance of any change in address or employment.
  - Notify CCO within 48 hours of any new arrests or criminal convictions.
  - Pay DOC monthly supervision assessment.
  - Comply with crime-related prohibitions.
- SERIOUS VIOLENT / VIOLENT OFFENSE, CRIME AGAINST A PERSON AND/OR DRUG OFFENSE (non-DOSA)**
  - Work only at DOC-approved education, employment and/or community service.
  - Possess or consume no controlled substances without legal prescription.
  - Reside only at DOC-approved location and arrangement.
- FIRST OFFENDER**
  - Obey all laws.
  - Devote time to specific employment or occupation.
  - Pursue a prescribed secular course of study or vocational training.
  - Participate in DOC programs and classes, as directed.
  - Undergo available outpatient treatment for up to one year, or inpatient treatment not to exceed standard sentence range.
- FINANCIAL GAIN**
  - Commit no thefts.
  - Possess no stolen property.
  - Have no checking account or possess any blank or partially blank checks.
  - Seek or maintain no employment or in a volunteer organization where Defendant has access to cash, checks, accounts receivable or payable, or books without the prior written permission of the CCO after notifying employer in writing of this conviction.
  - Use no names of persons other than the Defendant's true name on any document, written instrument, check, refund slip or similar written instrument.
  - Possess no identification in any other name other than Defendant's true name.
  - Possess no credit cards or access devices belonging to others or with false names.
  - Cause no articles to be refunded except with the written permission of CCO.
  - Take a polygraph test as requested by CCO to monitor compliance with supervision.

- PSI CONDITIONS**-All conditions recommended in the Pre-Sentence Investigation are incorporated herein as conditions of community custody, in addition to any conditions listed in this judgment and sentence.
- ALCOHOL/DRUGS**
  - Possess or consume no alcohol.
  - Enter no bar or place where alcohol is the chief item of sale.
  - Possess and use no illegal drugs and drug paraphernalia.
  - Submit to UA and breath tests at own expense at CCO request.
  - Submit to searches of person, residence or vehicles at CCO request.
  - Have no contact with any persons who are currently manufacturing or delivering controlled substances.
  - Install ignition interlock device as directed by CCO. RCW 46.20.710-.750.
- EVALUATIONS**- Complete an evaluation for:
  - substance abuse
  - anger management
  - mental health, and fully comply with all treatment recommended by CCO and/or treatment provider.
- DOSA/FOSA**
  - Successfully complete drug treatment program specified by DOC, and comply with all drug-related conditions ordered.
  - Devote time to a specific employment or training.
  - Perform community service work.
- 4.8-OFF-LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following "protected against drug trafficking areas" are off-limits to the Defendant while under county jail or DOC supervision:
 

---
- PROGRAMS / ASSAULT**
  - Have no assaultive behavior.
  - Successfully complete a certified DV perpetrators program.
  - Successfully complete an anger management class.
  - Successfully complete a victim's awareness program.
- TRAFFIC**
  - Commit no traffic offenses
  - Do not drive until your privilege to do so is restored by DOL.
- HAVE NO CONTACT WITH:**  
*see attachment*
- OTHER:** *Dox w/ Substance Abuse Severe & shall get treatment to achieve remissions*  
*Δ will also get treatment for mental illness.*



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**FINANCIAL OBLIGATIONS**

4.1-**LEGAL FINANCIAL OBLIGATIONS-RCW 9.94A.760.** The Court finds that the Defendant has the ability or likely future ability to pay legal financial obligations. The Defendant shall pay by cash, money order, or certified check to the Kitsap County Superior Court Clerk at 614 Division Street, MS-34, Port Orchard, WA 98366, as indicated-

<input checked="" type="checkbox"/> <b>\$500</b> Victim Assessment, RCW 7.68.035 [PCV]	\$_____ Sheriff service/sub. fees [SFR/SFS/SFW/SRF]
<del><input checked="" type="checkbox"/> <b>\$500</b> Court appointed attorney fees [DUB]</del>	\$_____ Witness Costs [WFR]
<input checked="" type="checkbox"/> <b>\$200</b> Filing Fee; \$110 if filed before 7/24/2005 [FRC]	\$_____ Jury Demand fee [JFR]
<input checked="" type="checkbox"/> <b>\$100</b> DNA / Biological Sample Fee, RCW 43.43.7541	\$_____ Court-appointed defense fees/other defense costs
<input type="checkbox"/> <b>\$1,000</b> <input type="checkbox"/> <b>\$2,000</b> Mandatory fine for drug crimes, RCW 69.50.430	<b>\$100</b> Domestic Violence Assessment, RCW 10.99.080 <input type="checkbox"/> Kitsap Co. YWCA <input type="checkbox"/> Kitsap Sexual Assault Ctr.
\$_____ Contribution to SIU-Kitsap County Sheriff's Office, RCW 9.94A.030, 9.94A.760.	<del><input checked="" type="checkbox"/> <b>\$100</b> Contribution-Kitsap County Expert Witness Fund [Kitsap County Ordinance 139-1991]</del>
<b>\$100</b> Crime Lab fee, RCW 43.43.690(1)	<b>\$500</b> Contribution-Kitsap Co. Special Assault Unit
<b>\$3,000</b> Methamphetamine / amphetamine Cleanup Fine, RCW 69.50.440 or 69.50.401(2)(b)	<b>\$100</b> Contribution-Anti-Profiteering Fund of Kitsap Co. Prosecuting Attorney's Office, RCW 9A.82.110
Emergency Response Costs - DUI, Veh. Homicide or Veh. Assault, RCW 38.52.430, per separate order.	<b>\$200</b> DUC-DUI/DP Account Fee - Imposed on any DUI, Physical Control, Vehicular Homicide, or Vehicular Assault. RCW 46.61.5054.

**RESTITUTION**-To be determined at a future date by separate order(s). If the defendant has waived his or her presence at any future restitution hearing, either through the terms of any applicable plea agreement in this case or by voluntary waiver indicated on the judgment and sentence, the court hereby accepts that waiver by the defendant.

**REMAINING LEGAL FINANCIAL OBLIGATIONS AND RESTITUTION**-The legal financial obligations and/or any restitution noted above may not be complete and are subject to future order by the Court.

**PAYMENT SCHEDULE** - All payments shall commence  immediately  within 60 days from today's date, and be made in accordance with policies of the Clerk or DOC and on a schedule as follows: pay ~~\$54.00~~  \$50  \$25  \_\_\_\_\_ per month, unless otherwise noted- *Monthly Stable* RCW 9.94A.760.

**12% INTEREST FOR LEGAL FINANCIAL OBLIGATIONS/ADDITIONAL COSTS**-Financial obligations in this judgment shall bear interest from date of the judgment until paid in full at the rate applicable to civil judgments. An award of costs of appeal may be added to the total legal financial obligations. RCW 10.82.090, RCW 10.73.160. **INTEREST WAIVED FOR TIMELY PAYMENTS**-The Superior Court Clerk has the authority to waive the 12% interest if the Defendant makes timely payments under this payment schedule.

**50% PENALTY FOR FAILURE TO PAY LEGAL FINANCIAL OBLIGATIONS**- Defendant shall pay the costs of services to collect unpaid legal financial obligations. Failure to make timely payments will result in assessment of additional penalties, including an additional 50% penalty if this case is sent to a collections agency due to non-payment. RCW 36.18.190.

**OTHER**

4.2-**HIV TESTING**-The Defendant shall submit to HIV testing. RCW 70.24.340.

4.2-**DNA TESTING**-The Defendant shall have a biological sample collected for DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency or DOC shall obtain the sample prior to the defendant's release from confinement. RCW 43.43.754. If the defendant is out of custody, he or she must report directly to the Kitsap County Jail to arrange for DNA sampling.

**FORFEITURE**-Forfeit all seized property subject to forfeiture under RCW 9.41.098 or RCW 69.50.505



- 1 to the originating law enforcement agency unless otherwise noted. Further, any seized property subject  
 2 to forfeiture under RCW 9.68A.120 or RCW 69.50.505 may be held by the originating law  
 3 enforcement agency pending the completion of such statutory proceedings.
- 4  **4.10-COMPLIANCE WITH SENTENCE**-Defendant shall perform all affirmative acts necessary for DOC to  
 5 monitor compliance with all of the terms of this Judgment and Sentence.
  - 6  **JOINT AGREEMENTS IN THE PLEA AGREEMENT**-Are in full force and effect unless otherwise stated in  
 7 this judgment and sentence.
  - 8  **EXONERATION**-The Court hereby exonerates any bail, bond, and/or personal recognizance conditions.

9 **NOTICES AND SIGNATURES**

- 10 5.1-COLLATERAL ATTACK ON JUDGMENT-Any petition or motion for collateral attack on this judgment  
 11 and sentence, including but not limited to any personal restraint petition, state habeas corpus petition,  
 12 motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest  
 13 judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW  
 14 10.73.100, RCW 10.73.090.
- 15 5.2-LENGTH OF SUPERVISION-The court shall retain jurisdiction over the offender, for the purposes of the  
 16 offender's compliance with payment of the legal financial obligations, until the obligation is completely  
 17 satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).
- 18 5.3-NOTICE OF INCOME-WITHHOLDING ACTION-If the Court has not ordered an immediate notice of  
 19 payroll deduction, you are notified that the DOC may issue a notice of a payroll deduction without notice to  
 20 you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the  
 21 amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW  
 22 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 23 5.5-ANY VIOLATION OF JUDGMENT AND SENTENCE-Is punishable by up to 60 days of confinement per  
 24 violation. RCW 9.94A.633. The court may also impose any of the penalties or conditions outlined in RCW  
 25 9.94A.633.
- 26 5.6-FIREARMS-You must immediately surrender any concealed pistol license and you may not own,  
 27 use, or possess any firearm unless your right to do so is restored by a court of record.
- 28 **Clerk's Action Required**-The court clerk shall forward a copy of the Defendant's driver's license, identicard, or  
 29 comparable identification, to the DOL along with the date of conviction or commitment. RCW 9.41.040, 9.41.047.

30 **Cross off if not applicable-**

31 ~~5.7-SEX AND KIDNAPPING OFFENDER REGISTRATION. LAWS OF 2010, CH. 267 § 1, RCW 9A.44.130, 10.01.200.~~

~~**1. General Applicability and Requirements:**~~

~~Because this crime involves a sex offense or kidnapping offense involving a minor as defined in LAWS OF 2010,  
 CH. 267 § 1 AND/OR RCW 9A.44.130, you are required to register.~~

~~If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington  
 where you reside. You must register within three business days of being sentenced unless you are in custody, in which  
 case you must register at the time of your release with the person designated by the agency that has jurisdiction over  
 you. You must also register within three business days of your release with the sheriff of the county of the state of  
 Washington where you will be residing.~~

~~If you are not a resident of Washington but you are a student in Washington or you are employed in Washington  
 or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of  
 employment, or vocation. You must register within three business days of being sentenced unless you are in custody,  
 in which case you must register at the time of your release with the person designated by the agency that has  
 jurisdiction over you. You must also register within three business days of your release with the sheriff of the county  
 of your school, where you are employed, or where you carry on a vocation~~

~~**2. Offenders Who are New Residents or Returning Washington Residents:**~~

~~If you move to Washington or if you leave this state following your sentencing or release from custody but later  
 move back to Washington, you must register within three business days after moving to this state. If you leave this state  
 following your sentencing or release from custody but later while not a resident of Washington you become employed  
 in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three  
 business days after starting school in this state or becoming employed or carrying out a vocation in this state.~~

~~**3. Change of Residence Within State:**~~



1 If you change your residence within a county, you must provide, by certified mail, with return receipt requested or  
2 in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you  
3 change your residence to a new county within this state, you must register with the sheriff of the new county within  
4 three business days of moving. Also within three business days, you must provide, by certified mail, with return  
5 receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you  
6 last registered.

4 **4. Leaving the State or Moving to Another State:**

5 If you move to another state, or if you work, carry on a vocation, or attend school in another state you must  
6 register a new address, fingerprints, and photograph with the new state within three business days after establishing  
7 residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the  
8 state, you must also send written notice within three business days of moving to the new state or to a foreign country to  
9 the county sheriff with whom you last registered in Washington State.

8 **5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher  
9 Education or Common School (K-12):**

9 If you are a resident of Washington and you are admitted to a public or private institution of higher education, you  
10 are required to notify the sheriff of the county of your residence of your intent to attend the institution within three  
11 business days prior to arriving at the institution. If you become employed at a public or private institution of higher  
12 education, you are required to notify the sheriff for the county of your residence of your employment by the institution  
13 within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or  
14 private institution of higher education is terminated, you are required to notify the sheriff for the county of your  
15 residence of your termination of enrollment or employment within three business days of such termination. If you  
16 attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are  
17 required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the  
18 sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the  
19 principal of the school.

15 **6. Registration by a Person Who Does Not Have a Fixed Residence:**

15 Even if you do not have a fixed residence, you are required to register. Registration must occur within three  
16 business days of release in the county where you are being supervised if you do not have a residence at the time of your  
17 release from custody. Within three business days after losing your fixed residence, you must send signed written  
18 notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than  
19 24 hours, you will be required to register with the sheriff of the new county not more than three business days after  
20 entering the new county. You must also report weekly in person to the sheriff of the county where you are registered.  
21 The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business  
22 hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff  
23 upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level  
24 and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

21 **7. Application for a Name Change:**

21 If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of  
22 your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If  
23 you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of  
24 your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

24 **5.8—PERSISTENT OFFENDER—**

24 **“Three Strike” Warning**—You have been convicted of an offense that is classified as a “most serious offense”  
25 under RCW 9.94A.030. A third conviction in Washington State of a most serious offense, regardless of whether the  
26 first two convictions occurred in a federal or non-Washington state court, will render you a “persistent offender.”

26 **“Two Strike” Warning**—In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree,  
27 rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child  
28 molestation in the first degree; or (2) any of the following offenses with a finding of sexual motivation: murder in the  
29 first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second  
30 degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in  
31 the second degree, or a burglary in the first degree; or (3) any attempt to commit any of the crimes listed in RCW  
9.94A.030(32), and you have at least one prior conviction for a crime listed in RCW 9.94A.030(32) in this state,  
federal court, or elsewhere, this will render you a “persistent offender.” RCW 9.94A.030(32).

**Persistent Offender Sentence**—A persistent offender shall be sentenced to a term of total confinement for life  
without the possibility of early release, or, when authorized by RCW 10.95.030 for the crime of aggravated murder in  
the first degree, sentenced to death, notwithstanding the maximum sentence under any other law. RCW 9.94A.570.



1  5.8--DEPARTMENT OF LICENSING NOTICE--The court finds that Count II is a felony in the  
2 commission of which a motor vehicle was used. Clerk's Action--The clerk shall forward an Abstract  
3 of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW  
4 46.20.285. Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular  
5 Assault, or Vehicular Homicide (ACR information):

6  BAC The defendant had an alcohol concentration of breath or blood within two hours after driving  
7 or being in physical control of \_\_\_\_ ;

8  No BAC test.

9  BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.

10  Drug Related. The defendant was under the influence of or affected by any drug.

11  THC.

12  Mental Health.

13  Passenger under age 16. The defendant committed the offense while a passenger under the age of  
14 sixteen was in the vehicle.

15 Vehicle Information: Commercial Vehicle  Yes  No; 16 Passenger  Yes  No; Hazmat  Yes  
16  No.

17 5.8--TREATMENT RECORDS--If the Defendant is or becomes subject to court-ordered mental health or  
18 chemical dependency treatment, the Defendant must notify DOC and must share the Defendant's treatment  
19 information with DOC for the duration of the Defendant's incarceration and supervision. RCW 9.94A.562.

20 **Voting Rights Statement:**

21 I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter  
22 registration will be cancelled.

23 My right to vote will be provisionally restored as long as I am not under the authority of DOC (not serving a sentence  
24 in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before  
25 voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial  
26 obligations or an agreement for the payment of legal financial obligations.

27 My right to vote may be permanently restored by one of the following for each felony conviction: a) A certificate of  
28 discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the  
29 right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050;  
30 or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C  
31 felony, RCW 92A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's Signature: X [Signature]

23 **SO ORDERED IN OPEN COURT.**

24 DATED May 16, 2017

25 [Signature]  
26 IONE S. GEORGE, WSBA NO. 18236  
27 Chief Deputy Prosecuting Attorney

28 [Signature]  
29 JUDGE Jeanette Dalton  
30 [Signature]  
31 [Signature], WSBA NO. 28564  
Attorney for Defendant

Defendant has previously, through their plea agreement, waived  
his or her presence at any future restitution hearing.



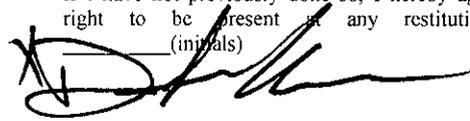
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\_\_\_\_\_(initials)

DAVID MICHAEL KALAC

Defendant

If I have not previously done so, I hereby agree to waive my right to be present at any restitution proceedings:

\_\_\_\_\_(initials)  


JUDGMENT AND SENTENCE; Page 12

[Form revised August 23, 2016]



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## Attachment A

Paul Coplin

Brycon Coplin

Timothy Coplin

Jason Coplin

James Rippley

Adam Gray

Rebecca Coplin

Teresa Schraw

Daylene Wey

Roger Wey

1 INTERPRETER'S DECLARATION - I am a certified or registered interpreter, or the court has found me other  
2 wise qualified to interpret, the \_\_\_\_\_ language, which the Defendant  
3 understands. I interpreted this Judgment and Sentence for the Defendant into that language.  
4 I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and  
5 correct.

6 Translator signature/Print name \_\_\_\_\_  
7 Signed at Port Orchard, Washington, on \_\_\_\_\_, 201\_\_.

8 **IDENTIFICATION OF DEFENDANT**

9 Race: White Sex: Male DOB: 06/29/1981 Age: 35  
10 D/L: KALACDM190L9 D/L State: Washington SID: WA18450414 Height: 603  
11 Weight: 210 JUVIS: Unknown Eyes: Brown Hair: Brown  
12 DOC: Unknown SSN: 531-92-6318 FBI: 452277EB8

13 FINGERPRINTS—I attest that I saw the same Defendant who appeared in Court on this document affix his or  
14 her fingerprints and signature thereto.

15 Clerk of the Court— [Signature], Deputy Clerk. Dated— 5/16/17

16 DEFENDANT'S SIGNATURE— [Signature]

17 Left 4 fingers taken simultaneously Left Thumb Right Thumb Right 4 fingers taken simultaneously



24 Prosecutor's File Number—14-108282-13

25 Prosecutor Distribution—Original (Court Clerk); 1 copy (Prosecutor), 1 copy (DOC), 1 copy (Defense Atty); 1 copy (Pros Stat Keeper)

26 JUDGMENT AND SENTENCE; Page 13

27 [Form revised August 23, 2016]



28 Tina R. Robinson, Prosecuting Attorney  
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31 Port Orchard, WA 98366-4681  
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# APPENDIX B

2018 WL 4499761

Only the Westlaw citation is currently available.  
Supreme Court of Washington.

STATE of Washington, Respondent,  
v.  
David Angel RAMIREZ, Petitioner.

NO. 95249-3

|  
Argued June 26, 2018

|  
Filed September 20, 2018

### Synopsis

**Background:** Defendant was convicted in the Superior Court, Lewis County, 15-1-00520-5, Richard Lynn Brosey, J., of third-degree assault with sexual motivation. He appealed. The Court of Appeals, 2017 WL 4791011, affirmed. Defendant petitioned for further review, which petition was granted only on issue of discretionary legal financial obligations (LFOs) imposed at sentencing.

**Holdings:** The Supreme Court, Stephens, J., held that:

de novo standard of review applied to trial court's alleged error in failing to conduct adequate inquiry prior to imposing discretionary LFOs;

trial court failed to conduct adequate individualized inquiry into defendant's ability to pay prior to imposing discretionary LFOs; and

amendments to discretionary LFO statute, enacted after defendant's petition for review was granted, applied prospectively to defendant's appeal.

Reversed and remanded.

Appeal from Lewis County Superior Court, (No. 15-1-00520-5), Hon. Richard Lynn Brosey, Judge

## Attorneys and Law Firms

Kathleen A. Shea, Washington Appellate Project, 1511 3rd Avenue, Suite 610, Seattle, WA 98101-3647, for Petitioner.

Jessica L. Blye, Lewis County Prosecutor's Office, 345 W. Main Street, Chehalis, WA 98532-4802, for Respondent.

## Opinion

STEPHENS, J.

\*1 ¶ 1 In *State v. Blazina*, 182 Wash.2d 827, 839, 344 P.3d 680 (2015), we held that under former RCW 10.01.160(3) (2015), trial courts have an obligation to conduct an individualized inquiry into a defendant's current and future ability to pay before imposing discretionary legal financial obligations (LFOs) at sentencing. This case provides an opportunity to more fully describe the nature of such an inquiry. An adequate inquiry must include consideration of the mandatory factors set forth in *Blazina*, including the defendant's incarceration and other debts, and the court rule GR 34 criteria for indigency. *Id.* at 838, 344 P.3d 680. The trial court should also address what we described in *Blazina* as other "important factors" relating to the defendant's financial circumstances, including employment history, income, assets and other financial resources, monthly living expenses, and other debts. *Id.*

¶ 2 The trial court in David A. Ramirez's case failed to conduct an adequate individualized inquiry before imposing LFOs on Ramirez. While this *Blazina* error would normally entitle Ramirez to a resentencing hearing on his ability to pay discretionary LFOs, such a limited resentencing is unnecessary in this case. Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess. (Wash. 2018) (House Bill 1783), which amended two statutes at issue and now prohibits the imposition of certain LFOs on indigent defendants, applies prospectively to Ramirez's case on appeal. We reverse the Court of Appeals and remand for the trial court to strike the improperly imposed LFOs from Ramirez's judgment and sentence.

## FACTS AND PROCEDURAL HISTORY

¶ 3 A jury convicted Ramirez of third degree assault and possession of a controlled substance, and found by special verdict that he committed the assault with sexual motivation and displayed an egregious lack of remorse. Clerk's Papers (CP) at 63-66.

¶ 4 At sentencing, the State sought an exceptional sentence of 10 years based on Ramirez’s prior record and offender score. 2 Verbatim Report of Proceedings (Mar. 7, 2016) (VRP) at 346. Following the State’s argument for imposing an exceptional sentence, Ramirez took the opportunity to directly address the trial court. Ramirez explained to the court that despite the State’s representations, he “was doing everything right” before his arrest. *Id.* at 360. Ramirez shared that prior to his arrest, he was working a minimum wage job at Weyerhaeuser as part of a “temporary service team” and paying all his household bills, including a DirecTV subscription that included Seattle Seahawks games. *Id.* at 359-60, 362-63. Ramirez had opened a bank account for the first time in his life, was planning on getting his driver’s license, and had moved into his own apartment with the help of his wife. *Id.* at 360, 362. Ramirez discussed these favorable aspects of his life in an effort to show that despite his criminal history, he did not deserve an exceptional sentence. Suppl. Br. of Pet’r at 3. He lamented that because of his drug relapse and arrest, “I missed out on all of that.” VRP at 363.<sup>1</sup>

<sup>1</sup> Ramirez’s full statement was, “I missed out on all of that because I screwed up before even the first Seahawk game. That was the weekend that I screwed up. It was the Saturday before the first Seahawk game.” VRP at 363.

\*2 ¶ 5 The trial court sentenced Ramirez to five years for the third degree assault conviction and two years for possession of a controlled substance, to be served consecutively. *Id.* at 372-73. The trial court also imposed \$2,900 in LFOs, including a \$500 victim assessment fee, a \$100 DNA (deoxyribonucleic acid) collection fee, a \$200 criminal filing fee, and discretionary LFOs of \$2,100 in attorney fees, and set a monthly payment amount of \$25. *Id.* at 375-76. After the court announced the sentence, Ramirez presented a notice of appeal and a motion for an order of indigency, which the court granted. *Id.* at 373; Suppl. CP at 1-4. According to the financial statement in his declaration of indigency, Ramirez had no source of income or assets and no savings, and owed more than \$10,000 at the time of sentencing (apparently previously imposed court costs and fees). Suppl. CP at 2-4.

¶ 6 Prior to imposing LFOs, the trial court asked only two questions relating to Ramirez’s current and future ability to pay, both of which were directed to the State. First, the court asked, “And when he is not in jail, he has the ability to make money to make periodic payments on his LFOs, right?” VRP at 348. The State responded that Ramirez had the ability to pay his LFOs “[w]hen he’s not in jail and when he is in jail,” noting that Ramirez could work while incarcerated. *Id.* The trial court then asked the State to once more confirm that LFOs were appropriate in Ramirez’s case: “But as far as you are concerned, the LFOs should be imposed.” *Id.* The State answered, “Yes.” *Id.*

¶ 7 The trial court did not directly ask Ramirez or his counsel about his ability to pay at any point during sentencing. The only statement made by Ramirez concerning his ability to pay came after the trial court announced its decision to impose discretionary costs. After finding that Ramirez had “the ability to earn money and make small payments on his financial

obligations,” the court listed the specific costs imposed and ordered Ramirez to pay “25 bucks a month starting [in] 60 days.” *Id.* at 375-76. Ramirez then asked, “How am I going to do that from inside?” *Id.* at 376. Ramirez’s counsel responded, “I will explain.” *Id.* The discussion then moved on to a different subject.<sup>2</sup>

<sup>2</sup> Ramirez’s counsel made only one mention of LFOs, in correcting the trial court’s original estimate of the amount of attorney fees. The court initially stated that these discretionary costs totaled \$900, but Ramirez’s counsel clarified that \$2,100 was the correct amount. VRP at 375.

¶ 8 On appeal, Ramirez argued that the trial court failed to make an adequate individualized inquiry into his ability to pay before imposing discretionary LFOs, contrary to *Blazina*, 182 Wash.2d at 837-38, 344 P.3d 680.<sup>3</sup> In a 2-1 unpublished opinion, Division Two of the Court of Appeals affirmed the trial court, holding that the court “conducted an adequate individualized inquiry and did not err in imposing the discretionary LFOs.” *State v. Ramirez*, No. 48705-5-II, slip op. at 13, 2017 WL 4791011 (Wash. Ct. App. Oct. 24, 2017) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2048705-5-II%20Unpublished%20Opinion.pdf>. In reviewing the trial court’s decision to impose discretionary LFOs on Ramirez, the Court of Appeals majority applied an overall abuse of discretion standard; it cited the information offered by Ramirez in his statement to the trial court as sufficient grounds for finding Ramirez able to pay LFOs. *Id.* at 12-13.

<sup>3</sup> Ramirez’s appeal additionally raised several guilt-phase claims of error, which the Court of Appeals rejected. *State v. Ramirez*, No. 48705-5-II, slip op. at 7-11, 13-15, 2017 WL 4791011 (Wash. Ct. App. Oct. 24, 2017) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2048705-5-II%20Unpublished%20Opinion.pdf>. These issues are not before us.

¶ 9 In dissent, Chief Judge Bjorgen argued that the question of whether a trial court made an adequate inquiry into a defendant’s ability to pay discretionary LFOs should be reviewed de novo, not for an abuse of discretion. *Id.* at 16 (Bjorgen, C.J., dissenting). Applying the de novo standard, Chief Judge Bjorgen concluded that the trial court’s inquiry into Ramirez’s financial status fell short of the *Blazina* standards. *Id.* at 19.

\*3 ¶ 10 On March 7, 2018, we granted Ramirez’s petition for review “only on the issue of discretionary [LFOs].” Order Granting Review, No. 95249-3 (Wash. Mar. 7, 2018). On March 27, 2018, just weeks after we granted Ramirez’s petition, House Bill 1783 became law. LAWS OF 2018, ch. 269. House Bill 1783’s amendments relate to Washington’s system for imposing and collecting LFOs and are effective as of June 7, 2018. House Bill 1783 is particularly relevant to Ramirez’s case because it amends the discretionary LFO statute to prohibit trial courts from imposing discretionary LFOs on defendants who are indigent at the time of sentencing. *Id.* at § 6(3).

## ANALYSIS

¶ 11 This case concerns Washington’s system of LFOs, specifically the imposition of discretionary LFOs on individuals who lack the current and future ability to pay them. State law requires that trial courts consider the financial resources of a defendant and the nature of the burden imposed by LFOs before ordering the defendant to pay discretionary costs. *See* RCW 10.01.160(3).

¶ 12 We addressed former RCW 10.01.160(3) in *Blazina* and held that the statute requires trial courts to conduct an individualized inquiry into the financial circumstances of each offender before levying any discretionary LFOs. 182 Wash.2d at 839, 344 P.3d 680. As Ramirez’s case demonstrates, however, costs are often imposed with very little discussion. We granted review in this case to articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs.

¶ 13 After we granted review, the legislature enacted House Bill 1783, which amends former RCW 10.01.160(3) to categorically prohibit the imposition of any discretionary costs on indigent defendants. LAWS OF 2018, ch. 269, § 6(3). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h) (2015), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h). According to Ramirez’s motion for an order of indigency, which the trial court granted, Ramirez unquestionably qualified as indigent at the time of sentencing: Ramirez had no source of income or assets and no savings, and owed more than \$10,000 at the time of sentencing. Suppl. CP at 3-4.

¶ 14 This case presents two issues. The primary issue is whether the trial court conducted an adequate individualized inquiry into Ramirez’s ability to pay, as required under *Blazina* and former RCW 10.01.160(3). A separate but related issue is whether House Bill 1783’s statutory amendments apply to Ramirez’s case on appeal.

### I. The Trial Court Did Not Conduct an Adequate Individualized Inquiry into Ramirez’s Current and Future Ability To Pay LFOs

¶ 15 The threshold issue in this case is whether the trial court performed an adequate inquiry into Ramirez’s present and future ability to pay before imposing discretionary LFOs. In addressing this issue, we must decide what standard of review applies to a trial court’s decision to impose discretionary LFOs. The Court of Appeals was seemingly split on this question, with the majority applying an overall abuse of discretion standard and the

dissenting judge applying de novo review. We address the proper standard of review before turning to the merits of Ramirez’s argument.

*A. The Adequacy of the Trial Court’s Individualized Inquiry into a Defendant’s Ability To Pay Discretionary LFOs Should Be Reviewed De Novo*

¶ 16 As Ramirez correctly points out, the question of whether the trial court adequately inquired into his ability to pay discretionary LFOs involves both a factual and a legal component. Suppl. Br. of Pet’r at 16. On the factual side, the reviewing court determines what evidence the trial court actually considered in making the *Blazina* inquiry. Chief Judge Bjorgen aptly observed that the factual determination can be decided by simply examining the record for supporting evidence.<sup>4</sup> *Ramirez, slip op. at 17* (Bjorgen, C.J., dissenting). On the legal side, the reviewing court decides whether the trial court’s inquiry complied with the requirements of *Blazina*. Both the majority and dissenting opinions below recognized that this legal inquiry merits de novo review. *See id. at 13 n.4* (“[w]hether or not a trial court makes an individualized inquiry is reviewed de novo”), *17* (Bjorgen, C.J., dissenting) (describing this as “an unalloyed legal question”).

<sup>4</sup> Ramirez criticizes Chief Judge Bjorgen for embracing a “clearly erroneous” standard of review for factual determinations, based on prior appellate decisions. *See* Suppl. Br. of Pet’r at 17 & n.6. Ramirez insists that “substantial evidence” is the correct Washington standard, while “clear error” applies in federal courts. *Id.* We believe the distinction is semantic in this context. The very case Ramirez cites as identifying different state and federal standards says, “[W]e review [factual findings] for substantial evidence, which is analogous to the ‘clear error’ test applied by the federal courts.” *Steele v. Lundgren*, 85 Wash. App. 845, 850, 935 P.2d 671 (1997).

\*4 ¶ 17 Given their shared recognition that de novo review applies to the question of whether the trial court complied with *Blazina*, the split in the Court of Appeals may be more a difference in emphasis than in substance. *Blazina* establishes what constitutes an adequate inquiry into a defendant’s ability to pay under state law, and the standard of review for an issue involving questions of law is de novo. *State v. Hanson*, 151 Wash.2d 783, 784-85, 91 P.3d 888 (2004). Ramirez is correct that the *Blazina* inquiry is similar to other inquiries trial judges make that are subject to de novo review. *See* Suppl. Br. of Pet’r at 16-17 (citing *State v. Vicuna*, 119 Wash. App. 26, 30-31, 79 P.3d 1 (2003) (applying de novo review to determination of whether a conflict exists between attorney and client); *State v. Ramirez-Dominguez*, 140 Wash. App. 233, 239, 165 P.3d 391 (2007) (applying de novo review to determination of whether the defendant knowingly, intelligently, and voluntarily waived his right to a jury trial) ).

¶ 18 That said, the trial court’s ultimate decision whether to impose discretionary LFOs is undoubtedly discretionary. The trial court must balance the defendant’s ability to pay against the burden of his obligation, which is an exercise of discretion. *State v. Baldwin*, 63 Wash. App. 303, 312, 818 P.2d 1116 (1991). But, discretion is necessarily abused when it is manifestly

unreasonable or based on untenable grounds or reasons. *State v. Stenson*, 132 Wash.2d 668, 701, 940 P.2d 1239 (1997). If the trial court fails to conduct an individualized inquiry into the defendant's financial circumstances, as RCW 10.01.160(3) requires, and nonetheless imposes discretionary LFOs on the defendant, the trial court has per se abused its discretionary power. Stated differently, the court's exercise of discretion is unreasonable when it is premised on a legal error. The focus of Ramirez's argument for de novo review is squarely on the trial court's legal error in failing to conduct an individualized inquiry. Thus, while the State is correct that the abuse of discretion standard of review is relevant to the broad question of whether discretionary LFOs were validly imposed, de novo review applies to the alleged error in this case: the failure to make an adequate inquiry under *Blazina*.

*B. The Trial Court's Inquiry into Ramirez's Ability To Pay Discretionary LFOs Was Inadequate under Blazina*

¶ 19 The legal question before us is whether the trial court's inquiry into Ramirez's current and future ability to pay discretionary LFOs was adequate under *Blazina*. In *Blazina*, we held that former RCW 10.01.160(3) requires the trial court to conduct an individualized inquiry on the record concerning a defendant's current and future ability to pay before imposing discretionary LFOs. 182 Wash.2d at 839, 344 P.3d 680. We explained that "the court must do more than sign a judgment and sentence with boilerplate language stating that it engaged in the required inquiry." *Id.* at 838, 344 P.3d 680. As part of this inquiry, the trial court is required to consider "important factors," such as incarceration and the defendant's other debts, when determining a defendant's ability to pay. *Id.* Additionally, we specifically instructed courts to look for additional guidance in the comment to court rule GR 34, which lists the ways a person may prove indigent status for the purpose of seeking a waiver of filing fees and surcharges. *Id.*; *City of Richland v. Wakefield*, 186 Wash.2d 596, 606-07, 380 P.3d 459 (2016). As we further clarified, "if someone does meet the GR 34 standard for indigency, courts should seriously question that person's ability to pay LFOs." *Blazina*, 182 Wash.2d at 839, 344 P.3d 680.

¶ 20 Here, the record shows that the trial court asked only two questions concerning Ramirez's ability to pay LFOs, both of which were directed to the State. First, the court asked, "And when he is not in jail, he has the ability to make money to make periodic payments on his LFOs, right?" VRP at 348. The State responded, "When he's not in jail and when he is in jail," noting that Ramirez could work while incarcerated. *Id.* The court then asked the State for clarification on the LFO issue: "But as far as you are concerned, the LFOs should be imposed." *Id.* In response, the State simply answered, "Yes." *Id.* The record reflects that these two questions, directed to the State, are the only questions asked by the trial court relating to Ramirez's ability to pay discretionary LFOs before ordering him to pay \$25 per month starting in 60 days. When Ramirez asked, "How am I going to do that

from inside?” *id.* at 376, the trial court said nothing. Ramirez’s counsel said, “I will explain,” and the court moved on. *Id.*

\*5 ¶ 21 The court made no inquiry into Ramirez’s debts, which his declaration of indigency listed as exceeding \$10,000 at the time of sentencing (apparently previously imposed court costs and fees). Suppl. CP at 4. Nor does the record reflect that the trial court inquired into whether Ramirez met the GR 34 standard for indigency. Had the court looked to GR 34 for guidance, as required under *Blazina*, it would have confirmed that Ramirez was indigent at the time of sentencing—his income fell below 125 percent of the federal poverty guideline. As we explained in *Blazina*, “if someone does meet the GR 34 standard for indigency, courts should seriously question that person’s ability to pay LFOs.” 182 Wash.2d at 839, 344 P.3d 680; Wakefield, 186 Wash.2d at 607, 380 P.3d 459. The record does not reflect that the trial court meaningfully inquired into any of the mandatory *Blazina* factors.

¶ 22 The trial court also failed to consider other “important factors” relating to Ramirez’s current and future ability to pay discretionary LFOs, such as Ramirez’s income, his assets and other financial resources, his monthly living expenses, and his employment history. *Blazina*, 182 Wash.2d at 838, 344 P.3d 680. In *Blazina*, we held that “[t]he record must reflect that the trial court made an individualized inquiry into the defendant’s current and future ability to pay,” which requires the court to consider “important factors,” in addition to the mandatory factors discussed above. *Id.* The only information in the record about Ramirez’s financial situation came during Ramirez’s allocution and was offered to show how he had been putting his life in order prior to his arrest. The court made no inquiry.

¶ 23 Consistent with *Blazina*’s instruction that courts use GR 34 as a guide for determining whether someone has an ability to pay discretionary costs, we believe the financial statement section of Ramirez’s motion for indigency would have provided a reliable framework for the individualized inquiry that *Blazina* and RCW 10.01.160(3) require. In determining a defendant’s indigency status, the financial statement section of the motion for indigency asks the defendant to answer questions relating to five broad categories: (1) employment history, (2) income, (3) assets and other financial resources, (4) monthly living expenses, and (5) other debts. *See* Suppl. CP at 2-4. These categories are equally relevant to determining a defendant’s ability to pay discretionary LFOs.

¶ 24 Regarding employment history, a trial court should inquire into the defendant’s present employment and past work experience. The court should also inquire into the defendant’s income, as well as the defendant’s assets and other financial resources. Finally, the court should ask questions about the defendant’s monthly expenses, and as identified in *Blazina*, the court must ask about the defendant’s other debts, including other LFOs, health care costs, or education loans. To satisfy *Blazina* and RCW 10.01.160(3)’s mandate that the State

cannot collect costs from defendants who are unable to pay, the record must reflect that the trial court inquired into all five of these categories before deciding to impose discretionary costs. That did not happen here.

¶ 25 The State argues, and the Court of Appeals majority agreed, that despite any lack of inquiry by the trial court into Ramirez’s ability to pay, statements by Ramirez during his allocution were adequate to support the imposition of discretionary LFOs. Resp’t’s Br. at 4. In opposing the State’s request for an exceptional sentence, Ramirez told the court he was “doing everything right” prior to his arrest—he was working a minimum wage job at Weyerhaeuser on a “temporary service team,” his wife had helped him get his own apartment, he was paying his household bills, including a DirecTV subscription, and he had opened a bank account for the first time in his life and was hoping to get a driver’s license. VRP at 359-363. Ramirez did not offer this information in the context of assessing his current and future ability to pay LFOs, but rather in an effort to “counter the State’s negative portrayal of him and direct the court’s attention to his accomplishments in order to persuade the court he was deserving of a lesser sentence.” Suppl. Br. of Pet’r at 19.

\*6 ¶ 26 Notably, while the Court of Appeals majority viewed Ramirez’s statements as supporting imposition of discretionary costs, there is no indication in the record that the trial court actually relied on any of Ramirez’s statements. *See Ramirez, slip op. at 13.*<sup>5</sup> Nor would reliance on Ramirez’s statements be reasonable, given that Ramirez was describing his circumstances and the positive strides he had made in the months *prior* to his arrest. As his statements at sentencing and his declaration of indigency make clear, all of that changed. Indeed, Ramirez lamented that after being on the right track, he “screwed up” and lost everything. VRP at 363.

<sup>5</sup> The Court of Appeals inferred that the trial court’s decision was based on Ramirez’s statements:

Here, the court considered that Ramirez had recently been released from custody, was working in a minimum wage job, and had been paying his household bills. Ramirez also told the court that he had opened a bank account for the first time in his life and “was just getting on track[.]” He added that although he was working a minimum wage job “it was fine because it took care of everything.” Thus, we hold that the court conducted an adequate individualized inquiry and did not err in imposing the discretionary LFOs.

*Ramirez, slip op. at 13* (citations omitted).

¶ 27 RCW 10.01.160(3) requires the trial court to inquire into a person’s present and future ability to pay LFOs. This inquiry must be made on the record, and courts should be cautious of any after-the-fact attempt to justify the imposition of LFOs based on information offered by a defendant for an entirely different purpose. Judges understand that defendants want to appear in their best light at sentencing. It is precisely for this reason that the judge’s obligation is to engage in an on-the-record individualized inquiry into the defendant’s ability to pay discretionary LFOs.

¶ 28 We hold that the trial court failed to make an adequate individualized inquiry into Ramirez’s current and future ability to pay prior to imposing discretionary LFOs. Normally, this *Blazina* error would entitle Ramirez to a full resentencing hearing on his ability to pay LFOs. The timing of Ramirez’s appeal, however, makes this case somewhat unusual. After we granted review, the legislature passed House Bill 1783, which amends two LFO statutes at issue. LAWS OF 2018, ch. 269. House Bill 1783 amends the discretionary LFO statute, former ROW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c). LAWS OF 2018, ch. 269, § 6(3). House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(h), to prohibit courts from imposing the \$200 filing fee on indigent defendants. LAWS OF 2018, ch. 269, § 17(2)(h).

¶ 29 Ramirez argues that House Bill 1783’s amendments apply to his case on appeal because he qualified as indigent at the time of sentencing and his case was not yet final when House Bill 1783 was enacted. Suppl. Br. of Pet’r at 8-10. As for the remedy, Ramirez asks us to strike the discretionary LFOs and the \$200 criminal filing fee from his judgment and sentence rather than remand his case for resentencing. For the reasons discussed below, we agree that House Bill 1783 applies on appeal to invalidate Ramirez’s discretionary LFOs (and the \$200 criminal filing fee) and that resentencing is unnecessary in this case.

## II. House Bill 1783 Applies Prospectively to Ramirez’s Case Because the Statutory Amendments Pertain to Costs and His Case on Direct Review Is Not Yet Final

¶ 30 House Bill 1783’s amendments modify Washington’s system of LFOs, addressing some of the worst facets of the system that prevent offenders from rebuilding their lives after conviction. For example, House Bill 1783 eliminates interest accrual on the nonrestitution portions of LFOs, it establishes that the DNA database fee is no longer mandatory if the offender’s DNA has been collected because of a prior conviction, and it provides that a court may not sanction an offender for failure to pay LFOs unless the failure to pay is willful. LAWS OF 2018, ch. 269, §§ 1, 18, 7. Relevant here, House Bill 1783 amends the discretionary LFO statute, former RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 6(3). It also prohibits imposing the \$200 filing fee on indigent defendants. *Id.* § 17. Because House Bill 1783 was enacted *after* we granted Ramirez’s petition for review, we must decide whether House Bill 1783’s amendments apply to Ramirez’s case on appeal. We hold that House Bill 1783 applies prospectively to Ramirez because the statutory amendments pertain to costs imposed on criminal defendants following conviction, and Ramirez’s case was pending on direct review and thus not final when the amendments were enacted.

\*7 ¶ 31 At the time of Ramirez’s sentencing in 2016, the discretionary cost statute provided that “[t]he court shall not order a defendant to pay costs unless the defendant is or will be

able to pay them.” Former RCW 10.01.160(3). In making this determination, the statute instructed the trial court to “take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.” *Id.* The statutory language directs that the trial court must consider a defendant’s current and future ability to pay before deciding to impose discretionary costs on the defendant.

¶ 32 House Bill 1783 amends former RCW 10.01.160(3) to expressly prohibit courts from imposing discretionary costs on defendants who are indigent at the time of sentencing: “The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).” LAWS OF 2018, ch. 269, § 6(3). Under RCW 10.101.010(3)(a) through (c), a person is “indigent” if the person receives certain types of public assistance, is involuntarily committed to a public mental health facility, or receives an annual income after taxes of 125 percent or less of the current federal poverty level. If the defendant is not indigent, the amendment instructs the court to engage in the same individualized inquiry into the defendant’s ability to pay as previously required under former RCW 10.01.160(3), i.e., to assess “the financial resources of the defendant and the nature of the burden that payment of costs will impose.” *Id.* In this case, there is no question that Ramirez satisfied the indigency requirements of RCW 10.101.010(3)(c) at the time of sentencing. Accordingly, if House Bill 1783 applies to Ramirez’s case, the trial court impermissibly imposed discretionary LFOs on Ramirez.

¶ 33 As noted, House Bill 1783 also amends the criminal filing fee statute, former RCW 36.18.020(2)(h), to prohibit charging the \$200 criminal filing fee to defendants who are indigent at the time of sentencing. LAWS OF 2018, ch. 269, § 17. Thus, if House Bill 1783’s amendments apply to Ramirez’s case on appeal, the trial court improperly imposed both the discretionary costs of \$2,100 and the criminal filing fee.

¶ 34 This is not our first occasion to consider the prospective application of cost statutes to criminal cases on appeal. In State v. Blank, 131 Wash.2d 230, 249, 930 P.2d 1213 (1997), we held that a statute imposing appellate costs applied prospectively to the defendants’ cases on appeal. In Blank, the defendants’ appeals were pending when the legislature enacted a statute providing for recoupment of appellate defense costs from a convicted defendant. *Id.* at 234, 930 P.2d 1213. In determining whether the statute applied to the defendants’ cases, we clarified that “[a] statute operates prospectively when the precipitating event for [its] application ... occurs after the effective date of the statute.” *Id.* at 248, 930 P.2d 1213 (alterations in original) (quoting Aetna Life Ins. Co. v. Wash. Life & Disability Ins. Guar. Ass’n, 83 Wash.2d 523, 535, 520 P.2d 162 (1974) ). We concluded that the “precipitating event” for a statute “concerning attorney fees and costs of litigation” was the termination of the defendant’s case and held that the statute therefore applied prospectively to cases that were pending on appeal when the costs statute was enacted. *Id.* at 249, 930 P.2d 1213

(citing *Kilpatrick v. Dep't of Labor & Indus.*, 125 Wash.2d 222, 232, 883 P.2d 1370, 915 P.2d 519 (1994) (holding that the right to attorney fees is governed by the statute in force at the termination of the action) ).

\*8 ¶ 35 Similar to the statute at issue in *Blank*, House Bill 1783's amendments concern the court's ability to impose costs on a criminal defendant following conviction. House Bill 1783 amends former RCW 10.01.160(3) by expressly prohibiting the imposition of discretionary LFOs on defendants like Ramirez who are indigent at the time of sentencing; the amendment conclusively establishes that courts do not have discretion to impose such LFOs. And, like the defendants in *Blank*, Ramirez's case was on appeal as a matter of right and thus was not yet final under RAP 12.7 when House Bill 1783 became effective. Because House Bill 1783's amendments pertain to costs imposed upon conviction and Ramirez's case was not yet final when the amendments were enacted, Ramirez is entitled to benefit from this statutory change.

¶ 36 Applying House Bill 1783 to the facts of this case, we hold that the trial court impermissibly imposed discretionary LFOs of \$2,100, as well as the \$200 criminal filing fee, on Ramirez. We reverse the Court of Appeals and remand for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs.

## CONCLUSION

¶ 37 In *Blazina*, we held that under former RCW 10.73.160(3), trial courts have an obligation to conduct an individualized inquiry into a defendant's current and future ability to pay discretionary LFOs before imposing them at sentencing. Today, we articulate specific inquiries trial courts should make in determining whether an individual has the current and future ability to pay discretionary costs. Trial courts must meaningfully inquire into the mandatory factors established by *Blazina*, such as a defendant's incarceration and other debts, or whether a defendant meets the GR 34 standard for indigency. Trial courts must also consider other "important factors" relating to a defendant's financial circumstances, including employment history, income, assets and other financial resources, monthly living expenses, and other debts. Under this framework, trial courts must conduct an on-the-record inquiry into the mandatory *Blazina* factors and other "important factors" before imposing discretionary LFOs.

¶ 38 We reverse the Court of Appeals and hold that the trial court failed to conduct an adequate *Blazina* inquiry into Ramirez's current and future ability to pay. Although this *Blazina* error would normally entitle Ramirez to a resentencing hearing on his ability to pay, resentencing is unnecessary in this case. House Bill 1783, which prohibits the imposition of discretionary LFOs on an indigent defendant, applies on appeal to invalidate Ramirez's

discretionary LFOs (and the \$200 criminal filing fee). We remand for the trial court to strike the \$2,100 discretionary LFOs and the \$200 filing fee from Ramirez's judgment and sentence.

WE CONCUR:

Fairhurst, C.J.

Johnson, J.

Madsen, J.

Owens, J.

Wiggins, J.

González, J.

Gordon McCloud, J.

Yu, J.

**All Citations**

--- P.3d ----, 2018 WL 4499761

# APPENDIX C

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783**

65th Legislature  
2018 Regular Session

Passed by the House March 6, 2018  
Yeas 83 Nays 15

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**Speaker of the House of Representatives**

Passed by the Senate February 28, 2018  
Yeas 32 Nays 17

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783** as passed by House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1783

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AS AMENDED BY THE SENATE

Passed Legislature - 2018 Regular Session

**State of Washington**                      **65th Legislature**                      **2017 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Holy, Goodman, Hansen, Hayes, Stokesbary, Senn, Orwall, Kagi, Appleton, Kilduff, Rodne, Jinkins, Taylor, Shea, Tharinger, Frame, Fitzgibbon, Bergquist, Fey, Macri, Ryu, Doglio, Pellicciotti, Peterson, Santos, Reeves, Kloba, Robinson, Stanford, Hudgins, McBride, Ormsby, and Pollet)

READ FIRST TIME 02/24/17.

1            AN ACT Relating to legal financial obligations; amending RCW  
2 10.82.090, 3.50.100, 3.62.040, 35.20.220, 10.01.160, 10.01.170,  
3 10.01.180, 10.46.190, 10.64.015, 9.92.070, 10.73.160, 9.94A.6333,  
4 9.94A.760, 9.94B.040, 3.62.085, 36.18.020, 43.43.7541, and 7.68.035;  
5 reenacting and amending RCW 3.62.020; and creating new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            **Sec. 1.** RCW 10.82.090 and 2015 c 265 s 23 are each amended to  
8 read as follows:

9            (1) Except as provided in subsection (2) of this section,  
10 (~~financial obligations~~) restitution imposed in a judgment shall  
11 bear interest from the date of the judgment until payment, at the  
12 rate applicable to civil judgments. As of the effective date of this  
13 section, no interest shall accrue on nonrestitution legal financial  
14 obligations. All nonrestitution interest retained by the court shall  
15 be split twenty-five percent to the state treasurer for deposit in  
16 the state general fund, twenty-five percent to the state treasurer  
17 for deposit in the judicial information system account as provided in  
18 RCW 2.68.020, twenty-five percent to the county current expense fund,  
19 and twenty-five percent to the county current expense fund to fund  
20 local courts.

1 (2) The court may, on motion by the offender, following the  
2 offender's release from total confinement, reduce or waive the  
3 interest on legal financial obligations levied as a result of a  
4 criminal conviction as follows:

5 (a) The court shall waive all interest on the portions of the  
6 legal financial obligations that are not restitution that accrued  
7 ~~((during the term of total confinement for the conviction giving rise  
8 to the financial obligations, provided the offender shows that the  
9 interest creates a hardship for the offender or his or her immediate  
10 family))~~ prior to the effective date of this section;

11 (b) The court may reduce interest on the restitution portion of  
12 the legal financial obligations only if the principal has been paid  
13 in full(~~+~~

14 ~~(c) The court may otherwise reduce or waive the interest on the  
15 portions of the legal financial obligations that are not restitution  
16 if the offender shows that he or she has personally made a good faith  
17 effort to pay and that the interest accrual is causing a significant  
18 hardship. For purposes of this section, "good faith effort" means  
19 that the offender has either (i) paid the principal amount in full;  
20 or (ii) made at least fifteen monthly payments within an eighteen-  
21 month period, excluding any payments mandatorily deducted by the  
22 department of corrections;~~

23 ~~(d) For purposes of (a) through (c) of this subsection, the court  
24 may reduce or waive interest on legal financial obligations only))~~  
25 and as an incentive for the offender to meet his or her other legal  
26 financial obligations. The court may grant the motion, establish a  
27 payment schedule, and retain jurisdiction over the offender for  
28 purposes of reviewing and revising the reduction or waiver of  
29 interest.

30 (3) This section only applies to adult offenders.

31 **Sec. 2.** RCW 3.50.100 and 2012 c 136 s 3 are each amended to read  
32 as follows:

33 (1) Costs in civil and criminal actions may be imposed as  
34 provided in district court. All fees, costs, fines, forfeitures and  
35 other money imposed by any municipal court for the violation of any  
36 municipal or town ordinances shall be collected by the court clerk  
37 and, together with any other noninterest revenues received by the  
38 clerk, shall be deposited with the city or town treasurer as a part  
39 of the general fund of the city or town, or deposited in such other

1 fund of the city or town, or deposited in such other funds as may be  
2 designated by the laws of the state of Washington.

3 (2) Except as provided in RCW 9A.88.120 and 10.99.080, the city  
4 treasurer shall remit monthly thirty-two percent of the noninterest  
5 money received under this section, other than for parking  
6 infractions, and certain costs to the state treasurer. "Certain  
7 costs" as used in this subsection, means those costs awarded to  
8 prevailing parties in civil actions under RCW 4.84.010 or 36.18.040,  
9 or those costs awarded against convicted defendants in criminal  
10 actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other  
11 similar statutes if such costs are specifically designated as costs  
12 by the court and are awarded for the specific reimbursement of costs  
13 incurred by the state, county, city, or town in the prosecution of  
14 the case, including the fees of defense counsel. Money remitted under  
15 this subsection to the state treasurer shall be deposited in the  
16 state general fund.

17 (3) The balance of the noninterest money received under this  
18 section shall be retained by the city and deposited as provided by  
19 law.

20 (4) (a) Except as provided in (b) of this subsection, penalties,  
21 finer, ((bail forfeitures,)) fees, and costs may accrue interest at  
22 the rate of twelve percent per annum, upon assignment to a collection  
23 agency. Interest may accrue only while the case is in collection  
24 status.

25 (b) As of the effective date of this section, penalties, fines,  
26 bail forfeitures, fees, and costs imposed against a defendant in a  
27 criminal proceeding shall not accrue interest.

28 (5) Interest retained by the court on penalties, fines, bail  
29 forfeitures, fees, and costs shall be split twenty-five percent to  
30 the state treasurer for deposit in the state general fund, twenty-  
31 five percent to the state treasurer for deposit in the judicial  
32 information system account as provided in RCW 2.68.020, twenty-five  
33 percent to the city general fund, and twenty-five percent to the city  
34 general fund to fund local courts.

35 **Sec. 3.** RCW 3.62.020 and 2012 c 262 s 1, 2012 c 136 s 4, and  
36 2012 c 134 s 6 are each reenacted and amended to read as follows:

37 (1) Except as provided in subsection (4) of this section, all  
38 costs, fees, fines, forfeitures and penalties assessed and collected  
39 in whole or in part by district courts, except costs, fines,

1 forfeitures and penalties assessed and collected, in whole or in  
2 part, because of the violation of city ordinances, shall be remitted  
3 by the clerk of the district court to the county treasurer at least  
4 monthly, together with a financial statement as required by the state  
5 auditor, noting the information necessary for crediting of such funds  
6 as required by law.

7 (2) Except as provided in RCW 9A.88.120, 10.99.080, 7.84.100(4),  
8 and this section, the county treasurer shall remit thirty-two percent  
9 of the noninterest money received under subsection (1) of this  
10 section except certain costs to the state treasurer. "Certain costs"  
11 as used in this subsection, means those costs awarded to prevailing  
12 parties in civil actions under RCW 4.84.010 or 36.18.040, or those  
13 costs awarded against convicted defendants in criminal actions under  
14 RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if  
15 such costs are specifically designated as costs by the court and are  
16 awarded for the specific reimbursement of costs incurred by the state  
17 or county in the prosecution of the case, including the fees of  
18 defense counsel. With the exception of funds to be transferred to the  
19 judicial stabilization trust account under RCW 3.62.060(2), money  
20 remitted under this subsection to the state treasurer shall be  
21 deposited in the state general fund.

22 (3) The balance of the noninterest money received by the county  
23 treasurer under subsection (1) of this section shall be deposited in  
24 the county current expense fund. Funds deposited under this  
25 subsection that are attributable to the county's portion of a  
26 surcharge imposed under RCW 3.62.060(2) must be used to support local  
27 trial court and court-related functions.

28 (4) Except as provided in RCW 7.84.100(4), all money collected  
29 for county parking infractions shall be remitted by the clerk of the  
30 district court at least monthly, with the information required under  
31 subsection (1) of this section, to the county treasurer for deposit  
32 in the county current expense fund.

33 (5) (a) Except as provided in (b) of this subsection, penalties,  
34 finances, ((bail forfeitures,)) fees, and costs may accrue interest at  
35 the rate of twelve percent per annum, upon assignment to a collection  
36 agency. Interest may accrue only while the case is in collection  
37 status.

38 (b) As of the effective date of this section, penalties, fines,  
39 bail forfeitures, fees, and costs imposed against a defendant in a  
40 criminal proceeding shall not accrue interest.

1 (6) Interest retained by the court on penalties, fines, bail  
2 forfeitures, fees, and costs shall be split twenty-five percent to  
3 the state treasurer for deposit in the state general fund, twenty-  
4 five percent to the state treasurer for deposit in the judicial  
5 information system account as provided in RCW 2.68.020, twenty-five  
6 percent to the county current expense fund, and twenty-five percent  
7 to the county current expense fund to fund local courts.

8 **Sec. 4.** RCW 3.62.040 and 2012 c 136 s 5 are each amended to read  
9 as follows:

10 (1) Except as provided in subsection (4) of this section, all  
11 costs, fines, forfeitures and penalties assessed and collected, in  
12 whole or in part, by district courts because of violations of city  
13 ordinances shall be remitted by the clerk of the district court at  
14 least monthly directly to the treasurer of the city wherein the  
15 violation occurred.

16 (2) Except as provided in RCW 9A.88.120 and 10.99.080, the city  
17 treasurer shall remit monthly thirty-two percent of the noninterest  
18 money received under this section, other than for parking infractions  
19 and certain costs, to the state treasurer. "Certain costs" as used in  
20 this subsection, means those costs awarded to prevailing parties in  
21 civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded  
22 against convicted defendants in criminal actions under RCW 10.01.160,  
23 10.46.190, or 36.18.040, or other similar statutes if such costs are  
24 specifically designated as costs by the court and are awarded for the  
25 specific reimbursement of costs incurred by the state, county, city,  
26 or town in the prosecution of the case, including the fees of defense  
27 counsel. Money remitted under this subsection to the state treasurer  
28 shall be deposited in the state general fund.

29 (3) The balance of the noninterest money received under this  
30 section shall be retained by the city and deposited as provided by  
31 law.

32 (4) All money collected for city parking infractions shall be  
33 remitted by the clerk of the district court at least monthly to the  
34 city treasurer for deposit in the city's general fund.

35 (5) (a) Except as provided in (b) of this subsection, penalties,  
36 fines, (~~bail forfeitures,~~) fees, and costs may accrue interest at  
37 the rate of twelve percent per annum, upon assignment to a collection  
38 agency. Interest may accrue only while the case is in collection  
39 status.

1       (b) As of the effective date of this section, penalties, fines,  
2 bail forfeitures, fees, and costs imposed against a defendant in a  
3 criminal proceeding shall not accrue interest.

4       (6) Interest retained by the court on penalties, fines, bail  
5 forfeitures, fees, and costs shall be split twenty-five percent to  
6 the state treasurer for deposit in the state general fund, twenty-  
7 five percent to the state treasurer for deposit in the judicial  
8 information system account as provided in RCW 2.68.020, twenty-five  
9 percent to the city general fund, and twenty-five percent to the city  
10 general fund to fund local courts.

11       **Sec. 5.** RCW 35.20.220 and 2012 c 136 s 7 are each amended to  
12 read as follows:

13       (1) The chief clerk, under the supervision and direction of the  
14 court administrator of the municipal court, shall have the custody  
15 and care of the books, papers and records of the court. The chief  
16 clerk or a deputy shall be present during the session of the court  
17 and has the power to swear all witnesses and jurors, administer oaths  
18 and affidavits, and take acknowledgments. The chief clerk shall keep  
19 the records of the court and shall issue all process under his or her  
20 hand and the seal of the court. The chief clerk shall do and perform  
21 all things and have the same powers pertaining to the office as the  
22 clerks of the superior courts have in their office. He or she shall  
23 receive all fines, penalties, and fees of every kind and keep a full,  
24 accurate, and detailed account of the same. The chief clerk shall on  
25 each day pay into the city treasury all money received for the city  
26 during the day previous, with a detailed account of the same, and  
27 taking the treasurer's receipt therefor.

28       (2) Except as provided in RCW 9A.88.120 and 10.99.080, the city  
29 treasurer shall remit monthly thirty-two percent of the noninterest  
30 money received under this section, other than for parking infractions  
31 and certain costs to the state treasurer. "Certain costs" as used in  
32 this subsection, means those costs awarded to prevailing parties in  
33 civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded  
34 against convicted defendants in criminal actions under RCW 10.01.160,  
35 10.46.190, or 36.18.040, or other similar statutes if such costs are  
36 specifically designated as costs by the court and are awarded for the  
37 specific reimbursement of costs incurred by the state, county, city,  
38 or town in the prosecution of the case, including the fees of defense

1 counsel. Money remitted under this subsection to the state treasurer  
2 shall be deposited in the state general fund.

3 (3) The balance of the noninterest money received under this  
4 section shall be retained by the city and deposited as provided by  
5 law.

6 (4) (a) Except as provided in (b) of this subsection, penalties,  
7 finer, ((bail forfeitures,)) fees, and costs may accrue interest at  
8 the rate of twelve percent per annum, upon assignment to a collection  
9 agency. Interest may accrue only while the case is in collection  
10 status.

11 (b) As of the effective date of this section, penalties, fines,  
12 bail forfeitures, fees, and costs imposed against a defendant in a  
13 criminal proceeding shall not accrue interest.

14 (5) Interest retained by the court on penalties, fines, bail  
15 forfeitures, fees, and costs shall be split twenty-five percent to  
16 the state treasurer for deposit in the state general fund, twenty-  
17 five percent to the state treasurer for deposit in the judicial  
18 information system account as provided in RCW 2.68.020, twenty-five  
19 percent to the city general fund, and twenty-five percent to the city  
20 general fund to fund local courts.

21 **Sec. 6.** RCW 10.01.160 and 2015 3rd sp.s. c 35 s 1 are each  
22 amended to read as follows:

23 (1) Except as provided in subsection (3) of this section, the  
24 court may require a defendant to pay costs. Costs may be imposed only  
25 upon a convicted defendant, except for costs imposed upon a  
26 defendant's entry into a deferred prosecution program, costs imposed  
27 upon a defendant for pretrial supervision, or costs imposed upon a  
28 defendant for preparing and serving a warrant for failure to appear.

29 (2) Costs shall be limited to expenses specially incurred by the  
30 state in prosecuting the defendant or in administering the deferred  
31 prosecution program under chapter 10.05 RCW or pretrial supervision.  
32 They cannot include expenses inherent in providing a constitutionally  
33 guaranteed jury trial or expenditures in connection with the  
34 maintenance and operation of government agencies that must be made by  
35 the public irrespective of specific violations of law. Expenses  
36 incurred for serving of warrants for failure to appear and jury fees  
37 under RCW 10.46.190 may be included in costs the court may require a  
38 defendant to pay. Costs for administering a deferred prosecution may  
39 not exceed two hundred fifty dollars. Costs for administering a

1 pretrial supervision other than a pretrial electronic alcohol  
2 monitoring program, drug monitoring program, or 24/7 sobriety program  
3 may not exceed one hundred fifty dollars. Costs for preparing and  
4 serving a warrant for failure to appear may not exceed one hundred  
5 dollars. Costs of incarceration imposed on a defendant convicted of a  
6 misdemeanor or a gross misdemeanor may not exceed the actual cost of  
7 incarceration. In no case may the court require the offender to pay  
8 more than one hundred dollars per day for the cost of incarceration.  
9 Payment of other court-ordered financial obligations, including all  
10 legal financial obligations and costs of supervision take precedence  
11 over the payment of the cost of incarceration ordered by the court.  
12 All funds received from defendants for the cost of incarceration in  
13 the county or city jail must be remitted for criminal justice  
14 purposes to the county or city that is responsible for the  
15 defendant's jail costs. Costs imposed constitute a judgment against a  
16 defendant and survive a dismissal of the underlying action against  
17 the defendant. However, if the defendant is acquitted on the  
18 underlying action, the costs for preparing and serving a warrant for  
19 failure to appear do not survive the acquittal, and the judgment that  
20 such costs would otherwise constitute shall be vacated.

21 (3) The court shall not order a defendant to pay costs (~~(unless)~~)  
22 if the defendant ((is or will be able to pay them)) at the time of  
23 sentencing is indigent as defined in RCW 10.101.010(3) (a) through  
24 (c). In determining the amount and method of payment of costs for  
25 defendants who are not indigent as defined in RCW 10.101.010(3) (a)  
26 through (c), the court shall take account of the financial resources  
27 of the defendant and the nature of the burden that payment of costs  
28 will impose.

29 (4) A defendant who has been ordered to pay costs and who is not  
30 in contumacious default in the payment thereof may at any time after  
31 release from total confinement petition the sentencing court for  
32 remission of the payment of costs or of any unpaid portion thereof.  
33 If it appears to the satisfaction of the court that payment of the  
34 amount due will impose manifest hardship on the defendant or the  
35 defendant's immediate family, the court may remit all or part of the  
36 amount due in costs, (~~(or)~~) modify the method of payment under RCW  
37 10.01.170, or convert the unpaid costs to community restitution  
38 hours, if the jurisdiction operates a community restitution program,  
39 at the rate of no less than the state minimum wage established in RCW  
40 49.46.020 for each hour of community restitution. Manifest hardship

1 exists where the defendant is indigent as defined in RCW  
2 10.101.010(3) (a) through (c).

3 (5) Except for direct costs relating to evaluating and reporting  
4 to the court, prosecutor, or defense counsel regarding a defendant's  
5 competency to stand trial as provided in RCW 10.77.060, this section  
6 shall not apply to costs related to medical or mental health  
7 treatment or services a defendant receives while in custody of the  
8 secretary of the department of social and health services or other  
9 governmental units. This section shall not prevent the secretary of  
10 the department of social and health services or other governmental  
11 units from imposing liability and seeking reimbursement from a  
12 defendant committed to an appropriate facility as provided in RCW  
13 10.77.084 while criminal proceedings are stayed. This section shall  
14 also not prevent governmental units from imposing liability on  
15 defendants for costs related to providing medical or mental health  
16 treatment while the defendant is in the governmental unit's custody.  
17 Medical or mental health treatment and services a defendant receives  
18 at a state hospital or other facility are not a cost of prosecution  
19 and shall be recoverable under RCW 10.77.250 and 70.48.130, chapter  
20 43.20B RCW, and any other applicable statute.

21 **Sec. 7.** RCW 10.01.170 and 1975-'76 2nd ex.s. c 96 s 2 are each  
22 amended to read as follows:

23 (1) When a defendant is sentenced to pay ((a)) fines, penalties,  
24 assessments, fees, restitution, or costs, the court may grant  
25 permission for payment to be made within a specified period of time  
26 or in specified installments. If the court finds that the defendant  
27 is indigent as defined in RCW 10.101.010(3) (a) through (c), the  
28 court shall grant permission for payment to be made within a  
29 specified period of time or in specified installments. If no such  
30 permission is included in the sentence the fine or costs shall be  
31 payable forthwith.

32 (2) An offender's monthly payment shall be applied in the  
33 following order of priority until satisfied:

34 (a) First, proportionally to restitution to victims that have not  
35 been fully compensated from other sources;

36 (b) Second, proportionally to restitution to insurance or other  
37 sources with respect to a loss that has provided compensation to  
38 victims;

39 (c) Third, proportionally to crime victims' assessments; and

1 (d) Fourth, proportionally to costs, fines, and other assessments  
2 required by law.

3 **Sec. 8.** RCW 10.01.180 and 2010 c 8 s 1006 are each amended to  
4 read as follows:

5 (1) A defendant sentenced to pay ~~((a))~~ any fine, penalty,  
6 assessment, fee, or costs who willfully defaults in the payment  
7 thereof or of any installment is in contempt of court as provided in  
8 chapter 7.21 RCW. The court may issue a warrant of arrest for his or  
9 her appearance.

10 (2) When ~~((a))~~ any fine, penalty, assessment, fee, or assessment  
11 of costs is imposed on a corporation or unincorporated association,  
12 it is the duty of the person authorized to make disbursement from the  
13 assets of the corporation or association to pay the ~~((fine or costs))~~  
14 obligation from those assets, and his or her failure to do so may be  
15 held to be contempt.

16 (3) (a) The court shall not sanction a defendant for contempt  
17 based on failure to pay fines, penalties, assessments, fees, or costs  
18 unless the court finds, after a hearing and on the record, that the  
19 failure to pay is willful. A failure to pay is willful if the  
20 defendant has the current ability to pay but refuses to do so.

21 (b) In determining whether the defendant has the current ability  
22 to pay, the court shall inquire into and consider: (i) The  
23 defendant's income and assets; (ii) the defendant's basic living  
24 costs as defined by RCW 10.101.010 and other liabilities including  
25 child support and other legal financial obligations; and (iii) the  
26 defendant's bona fide efforts to acquire additional resources. A  
27 defendant who is indigent as defined by RCW 10.101.010(3) (a) through  
28 (c) is presumed to lack the current ability to pay.

29 (c) If the court determines that the defendant is homeless or a  
30 person who is mentally ill, as defined in RCW 71.24.025, failure to  
31 pay a legal financial obligation is not willful contempt and shall  
32 not subject the defendant to penalties.

33 (4) If a term of imprisonment for contempt for nonpayment of  
34 ~~((a))~~ any fine, penalty, assessment, fee, or costs is ordered, the  
35 term of imprisonment shall be set forth in the commitment order, and  
36 shall not exceed one day for each twenty-five dollars of the ~~((fine~~  
37 ~~or costs))~~ amount ordered, thirty days if the ~~((fine or assessment))~~  
38 amount ordered of costs was imposed upon conviction of a violation or  
39 misdemeanor, or one year in any other case, whichever is the shorter

1 period. A person committed for nonpayment of ((a)) any fine, penalty,  
2 assessment, fee, or costs shall be given credit toward payment for  
3 each day of imprisonment at the rate specified in the commitment  
4 order.

5 ((4)) (5) If it appears to the satisfaction of the court that  
6 the default in the payment of ((a)) any fine, penalty, assessment,  
7 fee, or costs is not willful contempt, the court may, and if the  
8 defendant is indigent as defined in RCW 10.101.010(3) (a) through  
9 (c), the court shall enter an order: (a) Allowing the defendant  
10 additional time for payment((7)); (b) reducing the amount thereof or  
11 of each installment ((8)); (c) revoking the fine, penalty,  
12 assessment, fee, or costs or the unpaid portion thereof in whole or  
13 in part; or (d) converting the unpaid fine, penalty, assessment, fee,  
14 or costs to community restitution hours, if the jurisdiction operates  
15 a community restitution program, at the rate of no less than the  
16 state minimum wage established in RCW 49.46.020 for each hour of  
17 community restitution. The crime victim penalty assessment under RCW  
18 7.68.035 may not be reduced, revoked, or converted to community  
19 restitution hours.

20 ((5)) (6) A default in the payment of ((a)) any fine, penalty,  
21 assessment, fee, or costs or any installment thereof may be collected  
22 by any means authorized by law for the enforcement of a judgment. The  
23 levy of execution for the collection of ((a)) any fine, penalty,  
24 assessment, fee, or costs shall not discharge a defendant committed  
25 to imprisonment for contempt until the amount ((of the fine or

26 costs)) has actually been collected.

27 **Sec. 9.** RCW 10.46.190 and 2005 c 457 s 12 are each amended to  
28 read as follows:

29 Every person convicted of a crime or held to bail to keep the  
30 peace ((shall)) may be liable to all the costs of the proceedings  
31 against him or her, including, when tried by a jury in the superior  
32 court or before a committing magistrate, a jury fee as provided for  
33 in civil actions for which judgment shall be rendered and collected.  
34 The court shall not order a defendant to pay costs, as described in  
35 RCW 10.01.160, if the court finds that the person at the time of  
36 sentencing is indigent as defined in RCW 10.101.010(3) (a) through  
37 (c). The jury fee, when collected for a case tried by the superior  
38 court, shall be paid to the clerk and applied as the jury fee in  
39 civil cases is applied.

1       **Sec. 10.** RCW 10.64.015 and Code 1881 s 1104 are each amended to  
2 read as follows:

3       When the defendant is found guilty, the court shall render  
4 judgment accordingly, and the defendant (~~shall~~) may be liable for  
5 all costs, unless the court or jury trying the cause expressly find  
6 otherwise. The court shall not order a defendant to pay costs, as  
7 described in RCW 10.01.160, if the court finds that the person at the  
8 time of sentencing is indigent as defined in RCW 10.101.010(3) (a)  
9 through (c).

10       **Sec. 11.** RCW 9.92.070 and 1987 c 3 s 4 are each amended to read  
11 as follows:

12       Hereafter whenever any judge of any superior court or a district  
13 or municipal judge shall sentence any person to pay any fines,  
14 penalties, assessments, fees, and costs, the judge may, in the  
15 judge's discretion, provide that such fines, penalties, assessments,  
16 fees, and costs may be paid in certain designated installments, or  
17 within certain designated period or periods(~~;~~~~and~~). If the court  
18 finds that the defendant is indigent as defined in RCW 10.101.010(3)  
19 (a) through (c), the court shall allow for payment in certain  
20 designated installments or within certain designated periods. If such  
21 fines, penalties, assessments, fees, and costs shall be paid by the  
22 defendant in accordance with such order no commitment or imprisonment  
23 of the defendant shall be made for failure to pay such fine or costs.  
24 PROVIDED, that the provisions of this section shall not apply to any  
25 sentence given for the violation of any of the liquor laws of this  
26 state.

27       **Sec. 12.** RCW 10.73.160 and 2015 c 265 s 22 are each amended to  
28 read as follows:

29       (1) The court of appeals, supreme court, and superior courts may  
30 require an adult offender convicted of an offense to pay appellate  
31 costs.

32       (2) Appellate costs are limited to expenses specifically incurred  
33 by the state in prosecuting or defending an appeal or collateral  
34 attack from a criminal conviction. Appellate costs shall not include  
35 expenditures to maintain and operate government agencies that must be  
36 made irrespective of specific violations of the law. Expenses  
37 incurred for producing a verbatim report of proceedings and clerk's

1 papers may be included in costs the court may require a convicted  
2 defendant to pay.

3 (3) Costs, including recoupment of fees for court-appointed  
4 counsel, shall be requested in accordance with the procedures  
5 contained in Title 14 of the rules of appellate procedure and in  
6 Title 9 of the rules for appeal of decisions of courts of limited  
7 jurisdiction. An award of costs shall become part of the trial court  
8 judgment and sentence.

9 (4) A defendant who has been sentenced to pay costs and who is  
10 not in contumacious default in the payment may at any time after  
11 release from total confinement petition the court that sentenced the  
12 defendant or juvenile offender for remission of the payment of costs  
13 or of any unpaid portion. If it appears to the satisfaction of the  
14 sentencing court that payment of the amount due will impose manifest  
15 hardship on the defendant or the defendant's immediate family, the  
16 sentencing court may remit all or part of the amount due in costs,  
17 (~~or~~) modify the method of payment under RCW 10.01.170, or convert  
18 the unpaid costs to community restitution hours, if the jurisdiction  
19 operates a community restitution program, at the rate of no less than  
20 the state minimum wage established in RCW 49.46.020 for each hour of  
21 community restitution. Manifest hardship exists where the defendant  
22 or juvenile offender is indigent as defined in RCW 10.101.010(3) (a)  
23 through (c).

24 (5) The parents or another person legally obligated to support a  
25 juvenile offender who has been ordered to pay appellate costs and who  
26 is not in contumacious default in the payment may at any time  
27 petition the court that sentenced the juvenile offender for remission  
28 of the payment of costs or of any unpaid portion. If it appears to  
29 the satisfaction of the sentencing court that payment of the amount  
30 due will impose manifest hardship on the parents or another person  
31 legally obligated to support a juvenile offender or on their  
32 immediate families, the sentencing court may remit all or part of the  
33 amount due in costs, or may modify the method of payment.

34 **Sec. 13.** RCW 9.94A.6333 and 2008 c 231 s 19 are each amended to  
35 read as follows:

36 (1) If an offender violates any condition or requirement of a  
37 sentence, and the offender is not being supervised by the department,  
38 the court may modify its order of judgment and sentence and impose  
39 further punishment in accordance with this section.

1 (2) If an offender fails to comply with any of the nonfinancial  
2 conditions or requirements of a sentence the following provisions  
3 apply:

4 (a) The court, upon the motion of the state, or upon its own  
5 motion, shall require the offender to show cause why the offender  
6 should not be punished for the noncompliance. The court may issue a  
7 summons or a warrant of arrest for the offender's appearance;

8 (b) The state has the burden of showing noncompliance by a  
9 preponderance of the evidence;

10 (c) If the court finds that a violation has been proved, it may  
11 impose the sanctions specified in RCW 9.94A.633(1). Alternatively,  
12 the court may:

13 (i) Convert a term of partial confinement to total confinement;  
14 or

15 (ii) Convert community restitution obligation to total or partial  
16 confinement; (~~or~~

17 ~~(iii) Convert monetary obligations, except restitution and the~~  
18 ~~crime victim penalty assessment, to community restitution hours at~~  
19 ~~the rate of the state minimum wage as established in RCW 49.46.020~~  
20 ~~for each hour of community restitution;))~~

21 (d) If the court finds that the violation was not willful, the  
22 court may modify its previous order regarding (~~payment of legal~~  
23 ~~financial obligations and regarding~~) community restitution  
24 obligations; and

25 (e) If the violation involves a failure to undergo or comply with  
26 a mental health status evaluation and/or outpatient mental health  
27 treatment, the court shall seek a recommendation from the treatment  
28 provider or proposed treatment provider. Enforcement of orders  
29 concerning outpatient mental health treatment must reflect the  
30 availability of treatment and must pursue the least restrictive means  
31 of promoting participation in treatment. If the offender's failure to  
32 receive care essential for health and safety presents a risk of  
33 serious physical harm or probable harmful consequences, the civil  
34 detention and commitment procedures of chapter 71.05 RCW shall be  
35 considered in preference to incarceration in a local or state  
36 correctional facility.

37 (3) If an offender fails to pay legal financial obligations as a  
38 requirement of a sentence the following provisions apply:

39 (a) The court, upon the motion of the state, or upon its own  
40 motion, shall require the offender to show cause why the offender

1 should not be punished for the noncompliance. The court may issue a  
2 summons or a warrant of arrest for the offender's appearance;

3 (b) The state has the burden of showing noncompliance by a  
4 preponderance of the evidence;

5 (c) The court may not sanction the offender for failure to pay  
6 legal financial obligations unless the court finds, after a hearing  
7 and on the record, that the failure to pay is willful. A failure to  
8 pay is willful if the offender has the current ability to pay but  
9 refuses to do so. In determining whether the offender has the current  
10 ability to pay, the court shall inquire into and consider: (i) The  
11 offender's income and assets; (ii) the offender's basic living costs  
12 as defined by RCW 10.101.010 and other liabilities including child  
13 support and other legal financial obligations; and (iii) the  
14 offender's bona fide efforts to acquire additional resources. An  
15 offender who is indigent as defined by RCW 10.101.010(3) (a) through  
16 (c) is presumed to lack the current ability to pay;

17 (d) If the court determines that the offender is homeless or a  
18 person who is mentally ill, as defined in RCW 71.24.025, failure to  
19 pay a legal financial obligation is not willful noncompliance and  
20 shall not subject the offender to penalties;

21 (e) If the court finds that a failure to pay is willful  
22 noncompliance, it may impose the sanctions specified in RCW  
23 9.94A.633(1); and

24 (f) If the court finds that the violation was not willful, the  
25 court may, and if the court finds that the defendant is indigent as  
26 defined in RCW 10.101.010(3) (a) through (c), the court shall modify  
27 the terms of payment of the legal financial obligations, reduce or  
28 waive nonrestitution legal financial obligations, or convert  
29 nonrestitution legal financial obligations to community restitution  
30 hours, if the jurisdiction operates a community restitution program,  
31 at the rate of no less than the state minimum wage established in RCW  
32 49.46.020 for each hour of community restitution. The crime victim  
33 penalty assessment under RCW 7.68.035 may not be reduced, waived, or  
34 converted to community restitution hours.

35 (4) Any time served in confinement awaiting a hearing on  
36 noncompliance shall be credited against any confinement ordered by  
37 the court.

38 ((+4)) (5) Nothing in this section prohibits the filing of  
39 escape charges if appropriate.

1       **Sec. 14.** RCW 9.94A.760 and 2011 c 106 s 3 are each amended to  
2 read as follows:

3       (1) Whenever a person is convicted in superior court, the court  
4 may order the payment of a legal financial obligation as part of the  
5 sentence. The court may not order an offender to pay costs as  
6 described in RCW 10.01.160 if the court finds that the offender at  
7 the time of sentencing is indigent as defined in RCW 10.101.010(3)  
8 (a) through (c). An offender being indigent as defined in RCW  
9 10.101.010(3) (a) through (c) is not grounds for failing to impose  
10 restitution or the crime victim penalty assessment under RCW  
11 7.68.035. The court must on either the judgment and sentence or on a  
12 subsequent order to pay, designate the total amount of a legal  
13 financial obligation and segregate this amount among the separate  
14 assessments made for restitution, costs, fines, and other assessments  
15 required by law. On the same order, the court is also to set a sum  
16 that the offender is required to pay on a monthly basis towards  
17 satisfying the legal financial obligation. If the court fails to set  
18 the offender monthly payment amount, the department shall set the  
19 amount if the department has active supervision of the offender,  
20 otherwise the county clerk shall set the amount.

21       (2) Upon receipt of ((an offender's monthly)) each payment((7  
22 restitution shall be paid prior to any payments of other monetary  
23 obligations. After restitution is satisfied)) made by or on behalf of  
24 an offender, the county clerk shall distribute the payment  
25 ((proportionally among all other fines, costs, and assessments  
26 imposed, unless otherwise ordered by the court)) in the following  
27 order of priority until satisfied:

28       (a) First, proportionally to restitution to victims that have not  
29 been fully compensated from other sources;

30       (b) Second, proportionally to restitution to insurance or other  
31 sources with respect to a loss that has provided compensation to  
32 victims;

33       (c) Third, proportionally to crime victims' assessments; and

34       (d) Fourth, proportionally to costs, fines, and other assessments  
35 required by law.

36       ((+2)) (3) If the court determines that the offender, at the  
37 time of sentencing, has the means to pay for the cost of  
38 incarceration, the court may require the offender to pay for the cost  
39 of incarceration ((+)). The court shall not order the offender to  
40 pay the cost of incarceration if the court finds that the offender at

1 the time of sentencing is indigent as defined in RCW 10.101.010(3)  
2 (a) through (c). Costs of incarceration ordered by the court shall  
3 not exceed a rate of fifty dollars per day of incarceration, if  
4 incarcerated in a prison, or the ~~((court may require the offender to~~  
5 ~~pay the))~~ actual cost of incarceration per day of incarceration, if  
6 incarcerated in a county jail. In no case may the court require the  
7 offender to pay more than one hundred dollars per day for the cost of  
8 incarceration. ~~((Payment of other court-ordered financial~~  
9 ~~obligations, including all legal financial obligations and costs of~~  
10 ~~supervision shall take precedence over the payment of the cost of~~  
11 ~~incarceration ordered by the court.))~~ All funds recovered from  
12 offenders for the cost of incarceration in the county jail shall be  
13 remitted to the county and the costs of incarceration in a prison  
14 shall be remitted to the department.

15 ~~((3))~~ (4) The court may add to the judgment and sentence or  
16 subsequent order to pay a statement that a notice of payroll  
17 deduction is to be issued immediately. If the court chooses not to  
18 order the immediate issuance of a notice of payroll deduction at  
19 sentencing, the court shall add to the judgment and sentence or  
20 subsequent order to pay a statement that a notice of payroll  
21 deduction may be issued or other income-withholding action may be  
22 taken, without further notice to the offender if a monthly court-  
23 ordered legal financial obligation payment is not paid when due, and  
24 an amount equal to or greater than the amount payable for one month  
25 is owed.

26 If a judgment and sentence or subsequent order to pay does not  
27 include the statement that a notice of payroll deduction may be  
28 issued or other income-withholding action may be taken if a monthly  
29 legal financial obligation payment is past due, the department or the  
30 county clerk may serve a notice on the offender stating such  
31 requirements and authorizations. Service shall be by personal service  
32 or any form of mail requiring a return receipt.

33 ~~((4))~~ (5) Independent of the department or the county clerk,  
34 the party or entity to whom the legal financial obligation is owed  
35 shall have the authority to use any other remedies available to the  
36 party or entity to collect the legal financial obligation. These  
37 remedies include enforcement in the same manner as a judgment in a  
38 civil action by the party or entity to whom the legal financial  
39 obligation is owed. Restitution collected through civil enforcement  
40 must be paid through the registry of the court and must be

1 distributed proportionately according to each victim's loss when  
2 there is more than one victim. The judgment and sentence shall  
3 identify the party or entity to whom restitution is owed so that the  
4 state, party, or entity may enforce the judgment. If restitution is  
5 ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of  
6 rape of a child or a victim's child born from the rape, the  
7 Washington state child support registry shall be identified as the  
8 party to whom payments must be made. Restitution obligations arising  
9 from the rape of a child in the first, second, or third degree that  
10 result in the pregnancy of the victim may be enforced for the time  
11 periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other  
12 legal financial obligations for an offense committed prior to July 1,  
13 2000, may be enforced at any time during the ten-year period  
14 following the offender's release from total confinement or within ten  
15 years of entry of the judgment and sentence, whichever period ends  
16 later. Prior to the expiration of the initial ten-year period, the  
17 superior court may extend the criminal judgment an additional ten  
18 years for payment of legal financial obligations including crime  
19 victims' assessments. All other legal financial obligations for an  
20 offense committed on or after July 1, 2000, may be enforced at any  
21 time the offender remains under the court's jurisdiction. For an  
22 offense committed on or after July 1, 2000, the court shall retain  
23 jurisdiction over the offender, for purposes of the offender's  
24 compliance with payment of the legal financial obligations, until the  
25 obligation is completely satisfied, regardless of the statutory  
26 maximum for the crime. The department may only supervise the  
27 offender's compliance with payment of the legal financial obligations  
28 during any period in which the department is authorized to supervise  
29 the offender in the community under RCW 9.94A.728, 9.94A.501, or in  
30 which the offender is confined in a state correctional institution or  
31 a correctional facility pursuant to a transfer agreement with the  
32 department, and the department shall supervise the offender's  
33 compliance during any such period. The department is not responsible  
34 for supervision of the offender during any subsequent period of time  
35 the offender remains under the court's jurisdiction. The county clerk  
36 is authorized to collect unpaid legal financial obligations at any  
37 time the offender remains under the jurisdiction of the court for  
38 purposes of his or her legal financial obligations.

39 ((+5)) (6) In order to assist the court in setting a monthly sum  
40 that the offender must pay during the period of supervision, the

1 offender is required to report to the department for purposes of  
2 preparing a recommendation to the court. When reporting, the offender  
3 is required, under oath, to respond truthfully and honestly to all  
4 questions concerning present, past, and future earning capabilities  
5 and the location and nature of all property or financial assets. The  
6 offender is further required to bring all documents requested by the  
7 department.

8 ~~((6))~~ (7) After completing the investigation, the department  
9 shall make a report to the court on the amount of the monthly payment  
10 that the offender should be required to make towards a satisfied  
11 legal financial obligation.

12 ~~((7))~~ (8)(a) During the period of supervision, the department  
13 may make a recommendation to the court that the offender's monthly  
14 payment schedule be modified so as to reflect a change in financial  
15 circumstances. If the department sets the monthly payment amount, the  
16 department may modify the monthly payment amount without the matter  
17 being returned to the court. During the period of supervision, the  
18 department may require the offender to report to the department for  
19 the purposes of reviewing the appropriateness of the collection  
20 schedule for the legal financial obligation. During this reporting,  
21 the offender is required under oath to respond truthfully and  
22 honestly to all questions concerning earning capabilities and the  
23 location and nature of all property or financial assets. The offender  
24 shall bring all documents requested by the department in order to  
25 prepare the collection schedule.

26 (b) Subsequent to any period of supervision, or if the department  
27 is not authorized to supervise the offender in the community, the  
28 county clerk may make a recommendation to the court that the  
29 offender's monthly payment schedule be modified so as to reflect a  
30 change in financial circumstances. If the county clerk sets the  
31 monthly payment amount, or if the department set the monthly payment  
32 amount and the department has subsequently turned the collection of  
33 the legal financial obligation over to the county clerk, the clerk  
34 may modify the monthly payment amount without the matter being  
35 returned to the court. During the period of repayment, the county  
36 clerk may require the offender to report to the clerk for the purpose  
37 of reviewing the appropriateness of the collection schedule for the  
38 legal financial obligation. During this reporting, the offender is  
39 required under oath to respond truthfully and honestly to all  
40 questions concerning earning capabilities and the location and nature

1 of all property or financial assets. The offender shall bring all  
2 documents requested by the county clerk in order to prepare the  
3 collection schedule.

4 ~~((+8))~~ (9) After the judgment and sentence or payment order is  
5 entered, the department is authorized, for any period of supervision,  
6 to collect the legal financial obligation from the offender.  
7 Subsequent to any period of supervision or, if the department is not  
8 authorized to supervise the offender in the community, the county  
9 clerk is authorized to collect unpaid legal financial obligations  
10 from the offender. Any amount collected by the department shall be  
11 remitted daily to the county clerk for the purpose of disbursements.  
12 The department and the county clerks are authorized, but not  
13 required, to accept credit cards as payment for a legal financial  
14 obligation, and any costs incurred related to accepting credit card  
15 payments shall be the responsibility of the offender.

16 ~~((+9))~~ (10) The department or any obligee of the legal financial  
17 obligation may seek a mandatory wage assignment for the purposes of  
18 obtaining satisfaction for the legal financial obligation pursuant to  
19 RCW 9.94A.7701. Any party obtaining a wage assignment shall notify  
20 the county clerk. The county clerks shall notify the department, or  
21 the administrative office of the courts, whichever is providing the  
22 monthly billing for the offender.

23 ~~((+10))~~ (11) The requirement that the offender pay a monthly sum  
24 towards a legal financial obligation constitutes a condition or  
25 requirement of a sentence and the offender is subject to the  
26 penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737,  
27 or 9.94A.740. If the court determines that the offender is homeless  
28 or a person who is mentally ill, as defined in RCW 71.24.025, failure  
29 to pay a legal financial obligation is not willful noncompliance and  
30 shall not subject the offender to penalties.

31 ~~((+11))~~ (12)(a) The administrative office of the courts shall  
32 mail individualized periodic billings to the address known by the  
33 office for each offender with an unsatisfied legal financial  
34 obligation.

35 (b) The billing shall direct payments, other than outstanding  
36 cost of supervision assessments under RCW 9.94A.780, parole  
37 assessments under RCW 72.04A.120, and cost of probation assessments  
38 under RCW 9.95.214, to the county clerk, and cost of supervision,  
39 parole, or probation assessments to the department.

1 (c) The county clerk shall provide the administrative office of  
2 the courts with notice of payments by such offenders no less  
3 frequently than weekly.

4 (d) The county clerks, the administrative office of the courts,  
5 and the department shall maintain agreements to implement this  
6 subsection.

7 (~~(12)~~) (13) The department shall arrange for the collection of  
8 unpaid legal financial obligations during any period of supervision  
9 in the community through the county clerk. The department shall  
10 either collect unpaid legal financial obligations or arrange for  
11 collections through another entity if the clerk does not assume  
12 responsibility or is unable to continue to assume responsibility for  
13 collection pursuant to subsection (~~(4)~~) (5) of this section. The  
14 costs for collection services shall be paid by the offender.

15 (~~(13)~~) (14) The county clerk may access the records of the  
16 employment security department for the purposes of verifying  
17 employment or income, seeking any assignment of wages, or performing  
18 other duties necessary to the collection of an offender's legal  
19 financial obligations.

20 (~~(14)~~) (15) Nothing in this chapter makes the department, the  
21 state, the counties, or any state or county employees, agents, or  
22 other persons acting on their behalf liable under any circumstances  
23 for the payment of these legal financial obligations or for the acts  
24 of any offender who is no longer, or was not, subject to supervision  
25 by the department for a term of community custody, and who remains  
26 under the jurisdiction of the court for payment of legal financial  
27 obligations.

28 **Sec. 15.** RCW 9.94B.040 and 2002 c 175 s 8 are each amended to  
29 read as follows:

30 (1) If an offender violates any condition or requirement of a  
31 sentence, the court may modify its order of judgment and sentence and  
32 impose further punishment in accordance with this section.

33 (2) In cases where conditions from a second or later sentence of  
34 community supervision begin prior to the term of the second or later  
35 sentence, the court shall treat a violation of such conditions as a  
36 violation of the sentence of community supervision currently being  
37 served.

1 (3) If an offender fails to comply with any of the nonfinancial  
2 requirements or conditions of a sentence the following provisions  
3 apply:

4 (a)(i) Following the violation, if the offender and the  
5 department make a stipulated agreement, the department may impose  
6 sanctions such as work release, home detention with electronic  
7 monitoring, work crew, community restitution, inpatient treatment,  
8 daily reporting, curfew, educational or counseling sessions,  
9 supervision enhanced through electronic monitoring, jail time, or  
10 other sanctions available in the community.

11 (ii) Within seventy-two hours of signing the stipulated  
12 agreement, the department shall submit a report to the court and the  
13 prosecuting attorney outlining the violation or violations, and  
14 sanctions imposed. Within fifteen days of receipt of the report, if  
15 the court is not satisfied with the sanctions, the court may schedule  
16 a hearing and may modify the department's sanctions. If this occurs,  
17 the offender may withdraw from the stipulated agreement.

18 (iii) If the offender fails to comply with the sanction  
19 administratively imposed by the department, the court may take action  
20 regarding the original noncompliance. Offender failure to comply with  
21 the sanction administratively imposed by the department may be  
22 considered an additional violation;

23 (b) In the absence of a stipulated agreement, or where the court  
24 is not satisfied with the department's sanctions as provided in (a)  
25 of this subsection, the court, upon the motion of the state, or upon  
26 its own motion, shall require the offender to show cause why the  
27 offender should not be punished for the noncompliance. The court may  
28 issue a summons or a warrant of arrest for the offender's appearance;

29 (c) The state has the burden of showing noncompliance by a  
30 preponderance of the evidence. If the court finds that the violation  
31 has occurred, it may order the offender to be confined for a period  
32 not to exceed sixty days for each violation, and may (i) convert a  
33 term of partial confinement to total confinement, (ii) convert  
34 community restitution obligation to total or partial confinement, or  
35 ~~(iii) ((convert monetary obligations, except restitution and the~~  
36 ~~crime victim penalty assessment, to community restitution hours at~~  
37 ~~the rate of the state minimum wage as established in RCW 49.46.020~~  
38 ~~for each hour of community restitution, or (iv))~~) order one or more  
39 of the penalties authorized in (a)(i) of this subsection. Any time

1 served in confinement awaiting a hearing on noncompliance shall be  
2 credited against any confinement order by the court;

3 (d) If the court finds that the violation was not willful, the  
4 court may modify its previous order regarding (~~payment of legal~~  
5 ~~financial obligations and regarding~~) community restitution  
6 obligations; and

7 (e) If the violation involves a failure to undergo or comply with  
8 mental status evaluation and/or outpatient mental health treatment,  
9 the community corrections officer shall consult with the treatment  
10 provider or proposed treatment provider. Enforcement of orders  
11 concerning outpatient mental health treatment must reflect the  
12 availability of treatment and must pursue the least restrictive means  
13 of promoting participation in treatment. If the offender's failure to  
14 receive care essential for health and safety presents a risk of  
15 serious physical harm or probable harmful consequences, the civil  
16 detention and commitment procedures of chapter 71.05 RCW shall be  
17 considered in preference to incarceration in a local or state  
18 correctional facility.

19 (4) If the violation involves failure to pay legal financial  
20 obligations, the following provisions apply:

21 (a) The department and the offender may enter into a stipulated  
22 agreement that the failure to pay was willful noncompliance,  
23 according to the provisions and requirements of subsection (3)(a) of  
24 this section;

25 (b) In the absence of a stipulated agreement, or where the court  
26 is not satisfied with the department's sanctions as provided in a  
27 stipulated agreement under (a) of this subsection, the court, upon  
28 the motion of the state, or upon its own motion, shall require the  
29 offender to show cause why the offender should not be punished for  
30 the noncompliance. The court may issue a summons or a warrant of  
31 arrest for the offender's appearance;

32 (c) The state has the burden of showing noncompliance by a  
33 preponderance of the evidence. The court may not sanction the  
34 offender for failure to pay legal financial obligations unless the  
35 court finds, after a hearing and on the record, that the failure to  
36 pay is willful. A failure to pay is willful if the offender has the  
37 current ability to pay but refuses to do so. In determining whether  
38 the offender has the current ability to pay, the court shall inquire  
39 into and consider: (i) The offender's income and assets; (ii) the  
40 offender's basic living costs as defined by RCW 10.101.010 and other

1 liabilities including child support and other legal financial  
2 obligations; and (iii) the offender's bona fide efforts to acquire  
3 additional resources. An offender who is indigent as defined by RCW  
4 10.101.010(3) (a) through (c) is presumed to lack the current ability  
5 to pay;

6 (d) If the court determines that the offender is homeless or a  
7 person who is mentally ill, as defined in RCW 71.24.025, failure to  
8 pay a legal financial obligation is not willful noncompliance and  
9 shall not subject the offender to penalties;

10 (e) If the court finds that the failure to pay is willful  
11 noncompliance, the court may order the offender to be confined for a  
12 period not to exceed sixty days for each violation or order one or  
13 more of the penalties authorized in subsection (3)(a)(i) of this  
14 section; and

15 (f) If the court finds that the violation was not willful, the  
16 court may, and if the court finds that the defendant is indigent as  
17 defined in RCW 10.101.010(3) (a) through (c), the court shall modify  
18 the terms of payment of the legal financial obligations, reduce or  
19 waive nonrestitution legal financial obligations, or convert  
20 nonrestitution legal financial obligations to community restitution  
21 hours, if the jurisdiction operates a community restitution program,  
22 at the rate of no less than the state minimum wage established in RCW  
23 49.46.020 for each hour of community restitution. The crime victim  
24 penalty assessment under RCW 7.68.035 may not be reduced, waived, or  
25 converted to community restitution hours.

26 (5) The community corrections officer may obtain information from  
27 the offender's mental health treatment provider on the offender's  
28 status with respect to evaluation, application for services,  
29 registration for services, and compliance with the supervision plan,  
30 without the offender's consent, as described under RCW 71.05.630.

31 ~~((5))~~ (6) An offender under community placement or community  
32 supervision who is civilly detained under chapter 71.05 RCW, and  
33 subsequently discharged or conditionally released to the community,  
34 shall be under the supervision of the department of corrections for  
35 the duration of his or her period of community placement or community  
36 supervision. During any period of inpatient mental health treatment  
37 that falls within the period of community placement or community  
38 supervision, the inpatient treatment provider and the supervising  
39 community corrections officer shall notify each other about the

1 offender's discharge, release, and legal status, and shall share  
2 other relevant information.

3 ~~((6))~~ (7) Nothing in this section prohibits the filing of  
4 escape charges if appropriate.

5 **Sec. 16.** RCW 3.62.085 and 2005 c 457 s 10 are each amended to  
6 read as follows:

7 Upon conviction or a plea of guilty in any court organized under  
8 this title or Title 35 RCW, a defendant in a criminal case is liable  
9 for a fee of forty-three dollars, except this fee shall not be  
10 imposed on a defendant who is indigent as defined in RCW  
11 10.101.010(3) (a) through (c). This fee shall be subject to division  
12 with the state under RCW 3.46.120(2), 3.50.100(2), 3.62.020(2),  
13 3.62.040(2), and 35.20.220(2).

14 **Sec. 17.** RCW 36.18.020 and 2017 3rd sp.s. c 2 s 3 are each  
15 amended to read as follows:

16 (1) Revenue collected under this section is subject to division  
17 with the state under RCW 36.18.025 and with the county or regional  
18 law library fund under RCW 27.24.070, except as provided in  
19 subsection (5) of this section.

20 (2) Clerks of superior courts shall collect the following fees  
21 for their official services:

22 (a) In addition to any other fee required by law, the party  
23 filing the first or initial document in any civil action, including,  
24 but not limited to an action for restitution, adoption, or change of  
25 name, and any party filing a counterclaim, cross-claim, or third-  
26 party claim in any such civil action, shall pay, at the time the  
27 document is filed, a fee of two hundred dollars except, in an  
28 unlawful detainer action under chapter 59.18 or 59.20 RCW for which  
29 the plaintiff shall pay a case initiating filing fee of forty-five  
30 dollars, or in proceedings filed under RCW 28A.225.030 alleging a  
31 violation of the compulsory attendance laws where the petitioner  
32 shall not pay a filing fee. The forty-five dollar filing fee under  
33 this subsection for an unlawful detainer action shall not include an  
34 order to show cause or any other order or judgment except a default  
35 order or default judgment in an unlawful detainer action.

36 (b) Any party, except a defendant in a criminal case, filing the  
37 first or initial document on an appeal from a court of limited

1 jurisdiction or any party on any civil appeal, shall pay, when the  
2 document is filed, a fee of two hundred dollars.

3 (c) For filing of a petition for judicial review as required  
4 under RCW 34.05.514 a filing fee of two hundred dollars.

5 (d) For filing of a petition for unlawful harassment under RCW  
6 10.14.040 a filing fee of fifty-three dollars.

7 (e) For filing the notice of debt due for the compensation of a  
8 crime victim under RCW 7.68.120(2) (a) a fee of two hundred dollars.

9 (f) In probate proceedings, the party instituting such  
10 proceedings, shall pay at the time of filing the first document  
11 therein, a fee of two hundred dollars.

12 (g) For filing any petition to contest a will admitted to probate  
13 or a petition to admit a will which has been rejected, or a petition  
14 objecting to a written agreement or memorandum as provided in RCW  
15 11.96A.220, there shall be paid a fee of two hundred dollars.

16 (h) Upon conviction or plea of guilty, upon failure to prosecute  
17 an appeal from a court of limited jurisdiction as provided by law, or  
18 upon affirmance of a conviction by a court of limited jurisdiction,  
19 an adult defendant in a criminal case shall be liable for a fee of  
20 two hundred dollars, except this fee shall not be imposed on a  
21 defendant who is indigent as defined in RCW 10.101.010(3) (a) through  
22 (c).

23 (i) With the exception of demands for jury hereafter made and  
24 garnishments hereafter issued, civil actions and probate proceedings  
25 filed prior to midnight, July 1, 1972, shall be completed and  
26 governed by the fee schedule in effect as of January 1, 1972.  
27 However, no fee shall be assessed if an order of dismissal on the  
28 clerk's record be filed as provided by rule of the supreme court.

29 (3) No fee shall be collected when a petition for relinquishment  
30 of parental rights is filed pursuant to RCW 26.33.080 or for forms  
31 and instructional brochures provided under RCW 26.50.030.

32 (4) No fee shall be collected when an abstract of judgment is  
33 filed by the county clerk of another county for the purposes of  
34 collection of legal financial obligations.

35 (5) (a) Until July 1, 2021, in addition to the fees required to be  
36 collected under this section, clerks of the superior courts must  
37 collect surcharges as provided in this subsection (5) of which  
38 seventy-five percent must be remitted to the state treasurer for  
39 deposit in the judicial stabilization trust account and twenty-five  
40 percent must be retained by the county.

1 (b) On filing fees required to be collected under subsection  
2 (2)(b) of this section, a surcharge of thirty dollars must be  
3 collected.

4 (c) On all filing fees required to be collected under this  
5 section, except for fees required under subsection (2)(b), (d), and  
6 (h) of this section, a surcharge of forty dollars must be collected.

7 **Sec. 18.** RCW 43.43.7541 and 2015 c 265 s 31 are each amended to  
8 read as follows:

9 Every sentence imposed for a crime specified in RCW 43.43.754  
10 must include a fee of one hundred dollars unless the state has  
11 previously collected the offender's DNA as a result of a prior  
12 conviction. The fee is a court-ordered legal financial obligation as  
13 defined in RCW 9.94A.030 and other applicable law. For a sentence  
14 imposed under chapter 9.94A RCW, the fee is payable by the offender  
15 after payment of all other legal financial obligations included in  
16 the sentence has been completed. For all other sentences, the fee is  
17 payable by the offender in the same manner as other assessments  
18 imposed. The clerk of the court shall transmit eighty percent of the  
19 fee collected to the state treasurer for deposit in the state DNA  
20 database account created under RCW 43.43.7532, and shall transmit  
21 twenty percent of the fee collected to the agency responsible for  
22 collection of a biological sample from the offender as required under  
23 RCW 43.43.754. This fee shall not be imposed on juvenile offenders if  
24 the state has previously collected the juvenile offender's DNA as a  
25 result of a prior conviction.

26 **Sec. 19.** RCW 7.68.035 and 2015 c 265 s 8 are each amended to  
27 read as follows:

28 (1)(a) When any person is found guilty in any superior court of  
29 having committed a crime, except as provided in subsection (2) of  
30 this section, there shall be imposed by the court upon such convicted  
31 person a penalty assessment. The assessment shall be in addition to  
32 any other penalty or fine imposed by law and shall be five hundred  
33 dollars for each case or cause of action that includes one or more  
34 convictions of a felony or gross misdemeanor and two hundred fifty  
35 dollars for any case or cause of action that includes convictions of  
36 only one or more misdemeanors.

37 (b) When any juvenile is adjudicated of an offense that is a most  
38 serious offense as defined in RCW 9.94A.030, or a sex offense under

1 chapter 9A.44 RCW, there shall be imposed upon the juvenile offender  
2 a penalty assessment. The assessment shall be in addition to any  
3 other penalty or fine imposed by law and shall be one hundred dollars  
4 for each case or cause of action.

5 (c) When any juvenile is adjudicated of an offense which has a  
6 victim, and which is not a most serious offense as defined in RCW  
7 9.94A.030 or a sex offense under chapter 9A.44 RCW, the court shall  
8 order up to seven hours of community restitution, unless the court  
9 finds that such an order is not practicable for the offender. This  
10 community restitution must be imposed consecutively to any other  
11 community restitution the court imposes for the offense.

12 (2) The assessment imposed by subsection (1) of this section  
13 shall not apply to motor vehicle crimes defined in Title 46 RCW  
14 except those defined in the following sections: RCW 46.61.520,  
15 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504,  
16 46.52.101, 46.20.410, 46.52.020, 46.10.495, 46.09.480, 46.61.5249,  
17 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010,  
18 46.44.180, 46.10.490(2), and 46.09.470(2).

19 (3) When any person accused of having committed a crime posts  
20 bail in superior court pursuant to the provisions of chapter 10.19  
21 RCW and such bail is forfeited, there shall be deducted from the  
22 proceeds of such forfeited bail a penalty assessment, in addition to  
23 any other penalty or fine imposed by law, equal to the assessment  
24 which would be applicable under subsection (1) of this section if the  
25 person had been convicted of the crime.

26 (4) Such penalty assessments shall be paid by the clerk of the  
27 superior court to the county treasurer (~~who shall monthly transmit~~  
28 ~~the money as provided in RCW 10.82.070~~). Each county shall deposit  
29 (~~fifty~~) one hundred percent of the money it receives per case or  
30 cause of action under subsection (1) of this section (~~and retains~~  
31 ~~under RCW 10.82.070~~), not less than one and seventy-five one-  
32 hundredths percent of the remaining money it retains under RCW  
33 10.82.070 and the money it retains under chapter 3.62 RCW, and all  
34 money it receives under subsection (7) of this section into a fund  
35 maintained exclusively for the support of comprehensive programs to  
36 encourage and facilitate testimony by the victims of crimes and  
37 witnesses to crimes. A program shall be considered "comprehensive"  
38 only after approval of the department upon application by the county  
39 prosecuting attorney. The department shall approve as comprehensive  
40 only programs which:

1 (a) Provide comprehensive services to victims and witnesses of  
2 all types of crime with particular emphasis on serious crimes against  
3 persons and property. It is the intent of the legislature to make  
4 funds available only to programs which do not restrict services to  
5 victims or witnesses of a particular type or types of crime and that  
6 such funds supplement, not supplant, existing local funding levels;

7 (b) Are administered by the county prosecuting attorney either  
8 directly through the prosecuting attorney's office or by contract  
9 between the county and agencies providing services to victims of  
10 crime;

11 (c) Make a reasonable effort to inform the known victim or his or  
12 her surviving dependents of the existence of this chapter and the  
13 procedure for making application for benefits;

14 (d) Assist victims in the restitution and adjudication process;  
15 and

16 (e) Assist victims of violent crimes in the preparation and  
17 presentation of their claims to the department of labor and  
18 industries under this chapter.

19 Before a program in any county west of the Cascade mountains is  
20 submitted to the department for approval, it shall be submitted for  
21 review and comment to each city within the county with a population  
22 of more than one hundred fifty thousand. The department will consider  
23 if the county's proposed comprehensive plan meets the needs of crime  
24 victims in cases adjudicated in municipal, district or superior  
25 courts and of crime victims located within the city and county.

26 (5) Upon submission to the department of a letter of intent to  
27 adopt a comprehensive program, the prosecuting attorney shall retain  
28 the money deposited by the county under subsection (4) of this  
29 section until such time as the county prosecuting attorney has  
30 obtained approval of a program from the department. Approval of the  
31 comprehensive plan by the department must be obtained within one year  
32 of the date of the letter of intent to adopt a comprehensive program.  
33 The county prosecuting attorney shall not make any expenditures from  
34 the money deposited under subsection (4) of this section until  
35 approval of a comprehensive plan by the department. If a county  
36 prosecuting attorney has failed to obtain approval of a program from  
37 the department under subsection (4) of this section or failed to  
38 obtain approval of a comprehensive program within one year after  
39 submission of a letter of intent under this section, the county  
40 treasurer shall monthly transmit one hundred percent of the money

1 deposited by the county under subsection (4) of this section to the  
2 state treasurer for deposit in the state general fund.

3 (6) County prosecuting attorneys are responsible to make every  
4 reasonable effort to insure that the penalty assessments of this  
5 chapter are imposed and collected.

6 (7) Every city and town shall transmit monthly one and seventy-  
7 five one-hundredths percent of all money, other than money received  
8 for parking infractions, retained under RCW 3.50.100 and 35.20.220 to  
9 the county treasurer for deposit as provided in subsection (4) of  
10 this section.

11 NEW SECTION. **Sec. 20.** Nothing in this act requires the courts  
12 to refund or reimburse amounts previously paid towards legal  
13 financial obligations or interest on legal financial obligations.

14 NEW SECTION. **Sec. 21.** If specific funding for the purposes of  
15 this act, referencing this act by bill or chapter number, is not  
16 provided by June 30, 2018, in the omnibus appropriations act, this  
17 act is null and void.

--- END ---

# RUSSELL SELK LAW OFFICE

October 19, 2018 - 6:48 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50362-0  
**Appellate Court Case Title:** State of Washington, Respondent v David Michael Kalac, Appellant  
**Superior Court Case Number:** 14-1-01073-5

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